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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
MONDAY, MARCH 9, 1987

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC) Caplan, E. (Oriole L)

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Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

## Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Lupusella, A. (Dovercourt L) for Mr. Knight

McNeil, R. K. (Elgin PC) for Mr. Partington

Clerk: Mellor, L.

#### Staff:

Evans, C., Research Officer, Legislative Research Service

## Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Individual Presentation:

Anderson, E.

From the Pay Equity Research Institute, Faculty of Business Administration, University of Windsor:

Crocker, Dr. O. L., Director,

Individual Presentation:

Shally, R.

From the Ontario English Catholic Teachers' Association:

Cooney, J., President

Individual Presentation:

Bawden, D. E.



#### LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

## Monday, March 9, 1987

The committee met at 2:38 p.m. in committee room 1.

# PAY EQUITY ACT (continued)

Resuming consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good afternoon, members of the committee. The first delegation to come before us is Edna Anderson. The submission Mrs. Anderson has put before you is numbered 112. I ask Mrs. Anderson if she will come forward now, please. You may take a seat, Mrs. Anderson. We will be recording what you say through the microphones directly in front of you. Let me welcome you to the committee. We would like to hear your submissions in just a moment.

I believe the parliamentary assistant, however, has a document he wishes to table with the committee. I will allow him to introduce that and then we will go to your comments.

Mr. Ward: I indicated on Friday that we would be tabling, as soon as we had them available, the reports of the Premier's Labour Advisory Committee on Pay Equity. We now have a full set and I am tabling them with the clerk of the committee. Later on this afternoon, we will be tabling another study, Pay Equity in the Context of Collective Bargaining, a consultant's study that was done for the Ontario women's directorate. We just received the final report from that consultant on the weekend. It will be tabled later this afternoon. We will have a caucus; that is here today as well.

Mr. Chairman: All right. We do have a quorum; so, Mrs. Anderson, whenever you are ready, proceed with your comments before the committee. Again, we welcome you.

#### EDNA ANDERSON

Mrs. Anderson: I want to thank you very much for the opportunity to appear before you and to express concerns as a consumer and a housewife. I am one of many paying heavier taxes and higher costs for services and consumer goods. I am not yet a senior citizen, but that is not for long. Their numbers are increasing and they do not want to see, nor can they afford, higher taxes and costs.

I have studied the proposed legislation of Bill 154, the Pay Equity Act, and must say that as a legal document it is very clear and well written. At a glance, it sounds great, but if implemented, it would cause great concern. Pay equity for the private sector and the broad public sector should not be introduced until more thought and examination of possible cause and effect on the marketplace by the implementation of this bill can be established.

The following areas of concern should be examined to protect the consumer, the taxpayer, the employee and the employer.

- (a) The consumer has rights to buy competitive products and services produced in Ontario as against imported products. Examples would be higher food and clothing costs; banks and insurance would be examples of the services.
- (b) The taxpayer should not have to pay increased taxes from enforcement of Bill 154.
- (c) The employee has the option to work for the civil service under its Bill 105, the public sector, which may be unionized, or a unionized or nonunionized business.

Employees' wages should be decided by supply and demand to maintain a healthy economy which is competitive in goods and services. This helps to reduce unemployment and encourage new industries to locate in this province. In the past, the union has been the bargaining agent and negotiator for the wages and fringe benefits of its members. We do not need a commission to enforce laws. The machinery is already there.

I suggest that women form their own association to bargain but not ask the government and us to foot the bill.

(d) The employer should not be burdened with more legislation and bureaucracy and have to face unknown labour increases other than union and market forces. Employers should be encouraged to create productive work in Ontario and help reduce unemployment.

The decision on how much a woman should be paid should not be decided by a commissioner but should be bargained by groups already in place or negotiated by women's groups in the private sector.

In summing up, Bill 154 would create increased unemployment amongst women and increased costs of goods, services and taxes.

 $\underline{\text{Mr. Chairman}}$ : Thank you very much. I believe there are a couple of questions.

Ms. Caplan: I have one question. Are you familiar with the federal legislation on pay equity, which has been in effect now for some seven or eight years?

Mrs. Anderson: Is this the one dealing with contracts?

Ms. Caplan: It includes not only the broader federal sector; all regulated federal agencies, such as banks, have also been required to implement equal pay for work of equal value.

Mrs. Anderson: Yes, I understand. I think anything to do with a contract dealing with the government is fine. That is really noncompetitive in one sense. I feel there is no harm in that. I do not disapprove of women having equal pay for equal value; I am all for that.

 $\underline{\text{Ms. Caplan}}$ : You do support the principle of equal pay for work of equal value?

Mrs. Anderson: Most definitely.

Mr. Chairman: Ms. Caplan, that remark went by rather quickly. Did you mean equal pay for equal work? I am only asking you to clarify.

Mrs. Anderson: Work of equal value.

Mr. Chairman: There is a distinction in this bill. I am only trying to pick up a nuance in the way you answered the question.

Ms. Caplan: Perhaps you can let me clarify.

Mr. Chairman: All right, you pursue it; I just want to make sure we are speaking the same language.

Ms. Caplan: All right. For quite a number of years in Ontario we have had labour legislation. You may be aware that years ago, for specific jobs—the same job—we had a man's rate and a woman's rate. The equal pay for equal work legislation, which is in place in Ontario now, forbids employers to pay men and women differently when they are doing exactly the same job. For example, a male secretary and a female secretary must be paid the same. You are aware that we have that legislation.

Mrs. Anderson: I was not. Is that in effect in--

Ms. Caplan: We have had that in the labour standards in Ontario for quite some years, I believe since the 1950s.

Ms. Gigantes: Since 1951.

Ms. Caplan: There is a difference between equal pay for equal work, which is what the chairman was referring to, and the concept of equal pay for work of equal value, which allows jobs that are substantially the same or comparable in the value that the employer places on them within a job evaluation scheme. The question is, do you support the concept of equal pay for work of equal value?

Mrs. Anderson: No. in that sense I do not.

Mr. Chairman: That is why I asked the question.

Mrs. Anderson: Thank you. The reason is that I feel the employer has to control the value end of it. Things can change so quickly in the marketplace that a value set on one's ability one year could dramatically change a second year.

Ms. Caplan: Are you familiar with the fact that this legislation says that the employer is the one who will set the value for the job, not the person?

Mrs. Anderson: That is correct. But if this is going to tie up an employer to be swinging wages throughout the year or the next year, it is going to be quite confusing.

Ms. Caplan: That is not the intention of the legislation. I want to know--and I will be brief, Mr. Chairman--whether you are familiar with the federal legislation which has mandated equal pay for work of equal value, the Quebec legislation which has mandated equal pay for work of equal value and the Manitoba legislation which has also mandated equal pay for work of equal value here in Canada. Were you aware that those jurisdictions have already entrenched the principle?

Mrs. Anderson: Are those not mostly in the civil service?

Ms. Caplan: The federal legislation extends beyond the civil service and includes all federally regulated agencies as well as banks and so forth, as I mentioned to you. I just wanted to know whether you were aware that was in place already.

Mrs. Anderson: No, I do not think I have gone that deeply into it, but the--

Ms. Caplan: Bell Canada would be included in that, and all the federal crown corporations, Air Canada--

Mrs. Anderson: So they have all been covered?

Ms. Caplan: In the federal legislation.

Mrs. Anderson: Yes.

Ms. Caplan: You were not aware of that.

Mrs. Anderson: I was not aware of that, no. So that is the broader public service sector you are speaking of there, or a lot of it.

Ms. Caplan: In the federal legislation it actually goes to the private sector. If you consider crown corporations, banks and institutions as private sector, and I think most people do, then I think it is fair to say the federal legislation does cover some segments of the private sector and has since it was implemented some seven or eight years ago.

Mrs. Anderson: I feel anything that is put now into more government, more bureaucracy, is going to increase our taxes very considerably. We all know everybody is saying: "Please, no more taxes. No more." There is a very good setup. I feel women have many groups and could use their associations to set up similarly to, say, the engineers or the doctors. They all have their own levels of pay. Then an employer can bargain with or negotiate with those people.

Ms. Caplan: I guess this was in the green paper. I am wondering whether you have read the green paper, which I believe has noted that in the past 17 years, the wage gap has narrowed only four per cent because of the forces--

Mrs. Anderson: Over 17 years. As I say here, Rome was not built in a day. It is something we have to keep moving on.

Ms. Caplan: Do you acknowledge that we have a problem of systemic discrimination where women are bearing the burden within the economy of their undervalued work?

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Mrs. Anderson: I believe we have to get women's pay to--if there are, say, a male typist and a female typist, and if one is getting more than the other and they both do the same work, I definitely think they should be equal, but I do not feel that you can compare a typist with--what will I say?--

Mr. Chairman: Try a truck driver.

Mrs. Anderson: --a labourer doing a job.

Ms. Caplan: Try a janitor, because you have the situation right now in some of our school boards where the school secretary is earning less on an hourly or salary basis than the caretaker in the school, or the women working in the food services area are getting less.

Mrs. Anderson: That is right. But if they have their concern-those who are unionized have the unions that are bargaining for their fringe benefits and for themselves, are they not?

Ms. Caplan: The problem we have identified is that that has not addressed the issue of the systemic discrimination and the undervaluation of women's work in Ontario and that in fact that process has not worked in the past.

Mrs. Anderson: I think this is something women should be leaning more towards. Those who are in unions should get the unions to look at this. There are certainly other ways than having the government take this on. The commissioners we are talking about are all very learned people, I am sure, but to get anyone who understands the employer's actual business to set a rate and help him set that rate, to agree upon it, is going to be horrendous.

Ms. Caplan: What this legislation says, to sum up, is that it would be the employer who would look at his or her own establishment and determine relative values, as has been proven--actually, Minnesota has implemented equal pay for work of equal value, and it is not the government that will come in and say this is what you must pay your employees.

Mrs. Anderson: I understand that.

Ms. Caplan: It will be the employer who will determine value.

Mrs. Anderson: In summing up, I still feel, as I said, this will increase our taxes, and I do not think the women are going to benefit by this. There will be a great amount of unemployment. For instance, if typists are going to be given a large sum of money, the companies are going to do without typists; they will switch it all over to a new company that will handle just that.

Ms. Caplan: Thank you. Those are all my questions.

Mr. Chairman: Any further questions from members of the committee? There being none, I would like to thank you very kindly for taking the time to appear before us and for sharing your views on Bill 154. We will take your views into account, as we do all submissions, during clause-by-clause. This is not the last time your comments will be reviewed by the committee.

Mrs. Anderson: I should hope not. Thank you very much.

Mr. Chairman: There is a minor alteration with respect to the agenda, members of the committee. We have Dr. Olga Crocker here, which is submission 113. I believe Dr. Crocker is in the audience, if she would come forward, please. This submission was originally scheduled, I believe, for 4:30. Since we are a touch ahead of schedule, I think we can make that adjustment now, which would suit Dr. Crocker as well as the committee's interests.

We welcome you, Dr. Crocker. Thank you for coming before us. Whenever you have settled in, we look forward to hearing your views on Bill 154.

#### DR. OLGA CROCKER

Dr. Crocker: Thank you very much, and thank you for the opportunity of appearing before you.

First, the government is to be congratulated on this forward-looking action. If I have anything to criticize, it is going too slowly and the results will take too long to achieve.

Second, let me introduce myself, because I think that is very important in the context in which I speak. I am a professor of business administration at the University of Windsor. I am also an adjunct professor with Central Michigan University. Among the things I have done is being the author of six books, one of which is on quality circles, which deals with productivity improvement. Among my clients I have Ford Motor Co. of Canada, General Motors, Michigan Bell and the Puerto Rican power authority.

In addition, I run two particular groups, one of which is the Pay Equity Research Institute, which directs its attention to looking at these kinds of issues, and that is the one I address, and a little bit of advertising here, we also run Educational Skills Process, which is a group of teachers who are trying to educate illiterate adults.

What we have found is that the issue of pay equity or this business of paying for equal work is a very emotional one, and indeed, there are five reasons for this. First, most people do not understand it. Second, they feel that comparisons cannot be done. Third, they feel that, because of skill shortages, market differentials are necessary. Fourth, they feel the differentials that exist are not due to any gender differences, but to other things such as hours worked, women being out for child-bearing and so forth. The last argument I often hear is that it is going to bankrupt the company. May I address each of those in turn.

First, pay equity legislation is not understood. I hear my friends in the business community in Windsor say: "You know what will happen. The government will get in, pay attention to our business and tell us how much we have to pay our employees." I am sure I do not have to address that issue with this body.

Ms. Caplan: Would you, given that we have heard that? If you would explain that, I would appreciate it.

Dr. Crocker: Okay. First, I feel the legislation has been written in such a way that it leaves this issue to the union and management within the work place. It is up to them to negotiate and to determine the job evaluation system that exists. This is not a government-enforced system that is going to be in effect.

They are afraid the government—or what they are most afraid of is civil servants—will get into the act. It will, if indeed the employer or union, particularly the employer where there is no union, does not do anything about it. As I will point out later, the remedies asked for are not very strenuous.

Second, the argument has been made that job comparisons cannot be done or cannot be done fairly. It was pointed out that Manitoba, Quebec and the federal government have some type of job evaluation system. Also, there are 11 other countries that have a job evaluation system, and these seem to be working.

I am not saying there will be no prejudice in these systems, because they do reflect the biases and prejudices of the people who have drawn them up, and by their very nature, they could still discriminate against women. However, if you have good job descriptions through the process of negotiations, you tend to come at these issues and reach compromises that are acceptable to both groups.

We filed three sets of materials. One is a set of job descriptions for the University of Windsor and another outlines a number of publications, job evaluation methods and a list of compensable factors. Certainly, our group is prepared to assist any employer who would like help in this direction.

The third area is market differentials or skills shortages. Indeed, I personally am concerned that skills shortages is going to be one of the exempted categories. Let me draw on my own experience. Many years ago I was a teacher and I was quite active within the union. There were shortages of various types of people, and the school board argued that it had to have a market differential. The union agreed. It said, "All we want you to do when you pay this market differential is post the differential you have paid."

Several years went by, and we came to the negotiating table attempting to get this dropped and the school board said to us: "We do not want to drop it. We want to keep it in." We said, "But you have not used it in the last three years." Its answer was, "But you allowed us so little that we could not hire anyone, so we took off the cap."

In the next five or six years, I think the school board managed to hire maybe one or two people with this provision that the salary would have to be posted.

Second, I am a faculty member in business, and the faculties of business across Canada have a shortage of personnel. At a time when there is commitment to equal employment for men and women, women graduating from the program in this faculty where there is a shortage of people have not been able to get jobs. I could name any number of names. When they are offered jobs, it is at low salary.

Third, our study—and this is one we are filing—shows that market differentials tend to be paid to males, but not to females. I would like to suggest that if there is a skills shortage—and one of the areas that is often suggested is computer programming—maybe each organization, particularly the larger ones, should do something about eliminating that shortage, that is, training its own people to take these positions.

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The government might take some action there, and I know there are all sorts of programs within the federal and provincial govenments to try to eliminate skill shortages. A very common argument among my business friends is they cannot do this; it is going to bankrupt them. The adjustment is one per cent of total salary a year. I want to use four examples.

The first is the University of Windsor with a payroll of \$60 million. I think one per cent of that is \$600,000. We anticipate that for the next year, if this legislation was to come into effect next year, the increase will be something like four per cent. We are talking about \$2.5 million, of which \$600.000 is going to be earmarked for pay equity adjustments.

Knowing the university, I do not think that will come out of general funds. The amount of the total payroll will be redistributed, but there are several other ways in which the money can be gained. We have some extremely high salaries at the University of Windsor. I suppose one could put a ceiling on those high salaries. One could give a slightly lower percentage.

Let us talk about four per cent of \$80,000. That turns out to be \$3,200. Let us also talk of four per cent of \$15,000, the typical salary a secretary gets. That is \$600. Maybe there is somewhere between \$600 and \$3,200 or \$2,400, or whatever it is, where we might gain some of this pay equity adjustment that will be required.

Let me just quickly follow through with three other examples. If you will turn with me to page 5, I will give you my assumptions regarding this. I start with year 1, 1993. This particular small organization hires five females and 10 males. The average beginning salary, based on a secretarial-clerk position of \$15,000 six years from now, is \$18,250. The same for men, based on a male caretaker's present salary of \$23,500, is \$28,600.

These figures have been chosen not only for those positions, but because they also reflect the 64 per cent differential that exists. In my example, we give a four per cent increase over all the years in the first example, 10 per cent in the second one, and the equity adjustment is limited to one per cent.

The last assumption is that all females are eligible, and that may not necessarily be true in organizations. If you look at page 6, you will notice that I have calculated through the salaries, showing the pay equity increase, the salary that is there for both males and females and, coming up at the end of the first year, the ratio between male and female salaries has increased to 66.25 per cent from 64 per cent. At this rate, the year-end in which equity will occur is 2006.

On the followng page, I illustrated what will happen under a 10 per cent increase. It turns out that women are just a bit more disadvantaged, that is, the equity between the two groups will occur in 2007.

Until now, I have been talking of taking the money out of general funds. At this point I say on page 8, knowing employers, this probably will not happen. There is a pot of money that has to go for salaries, and you take whatever you have to take off the top and spread the rest of it. Incidentally, this may be part of the problem and the great opposition we are finding; that is, men's salaries, top managers' salaries, are a function of the salaries of the nonmanagerial staff, whether it is negotiated or not. Therefore, they see their own salaries being threatened. In this kind of arrangement, we find pay equity will occur in 2005.

It seems to me that 20 years is a long time in order to eliminate these kinds of inequities and not the kind of time frame that should impose a great deal of difficulty on employers.

A fifth argument that businessmen use is that it is attributable to a wide variety of factors. There is no doubt that these other factors are a consideration, but even after they are all taken out, gender continues to account for at least 20 per cent of the difference.

I would like to call attention to our own study, which is at the professorial ranks of the University of Windsor. Universities supposedly pride themselves on being guardians of the truth, justice, fairness and all those

things. If pay equity does not exist in these institutions, can we assume that it exists at other institutions? In the study, we looked only at male and female professors at the university. We ignored lecturers, sessionals, sessional members and librarians. We did not want to contaminate the evidence. What we have are career-oriented professionals only, all of whom have a minimum of six years post-high school education and most of whom have at least seven.

There is one more thing I want to make very clear. These are not people who are doing different jobs; they are doing exactly the same job. In other words, it is a group that already falls under pay legislation that exists and has been ignored.

Three components make up professorial work: teaching, publications and service. The university has never argued that women are poorer teachers. In fact, our research shows they are fairly good in this category. University publications point out that there is no difference in research productivity. Some women publish; others do not, but then there are a lot of men who do not publish either.

Using regression analysis, we determined that five factors account for the difference and they all work against women. These are the faculty in which they teach, academic rank, education, experience and gender. I am watching the clock a little, so let me ask you to turn to page 11.

When we hold everything else constant—that is, we are taking one of these items and plugging it into the equation for men or women, whichever it is, one at a time—we discover that women at the associate professor rank are disadvantaged by \$667. At the full professor rank, this is \$8,050. For a degree, women get \$960 less, and on the basis of age, \$80 less per year. On the following page there is an example we worked through that shows those differences.

If you turn to appendix 4, the regression analysis has done several things. At the top you see the results of what female salaries would be if they were plotted using the male equation. We have two equations, one for males, one for females. Females are typically getting much less, but we said, let us put it in the male equation and see how much money they should be getting. Those Xs that are way above that line indicate what women should be getting if they are paid what they are worth or paid on the same basis as men.

At the bottom we have a normal curve that shows exactly where these women's pay is located. If you follow through the dots, that is the normal curve. The zero point is the average. Incidentally, according to Statistics Canada, the salary of female professors at the University of Windsor is \$40,600, give or take something while that of men is about \$50,500. That is the average.

When you look at that example, you see that all women are below the average. Some of them, those bottom nine, are so far out that they do not even show on the normal curve, because 95 per cent of the population are between plus two and minus two on the normal curve, and there are at least nine that are much below that.

When we hold all things constant, when we take into consideration age, years at the university, highest degree, rank, academic discipline and productivity, women still receive only four fifths of the salaries that men do, and yet they are as educated, committed and all those other things. An important issue in discrimination is secrecy regarding pay and secrecy regarding evaluation schemes. I am glad to see in the act some attempt to eliminate some of this, but I feel it just has not gone far enough, and that is the feeling of the pay equity group as well.

Let me say to employers who are concerned that they cannot afford it, that they are already paying for it. When employees feel they are inequitably treated—and there is a whole field of research that will show this—they get back at the organization. First, they decrease their contributions and do as little as they can. They work to rule. They find little ways to sabotage the company. They increase their outcomes, they go about socializing, they are time robbers and some even become white-collar criminals.

We know of one case where a secretary felt so dissatisfied with the pay she was getting that every night she would take things home and throw them in the garbage. That does not make sense, but that was her way of striking out against an organization that was robbing her of what she felt she was entitled to.

They intimidate others not to work so hard. I am sure we know how threatening that can be in a union atmosphere. They leave the organization but they just do not leave; they daydream rather than work. They visit by telephone and in person. They are late more frequently. They take longer lunches and coffee breaks. They are absent more often and they stick around with the company, forcing it to dismiss them, if it dares. It generally does not, because it is a long and expensive process.

This kind of situation creates no winners. Unfortunately, in a very competitive world, women would not be hired. The previous speaker spoke about taxes going up and how we had to be competitive and keep costs down. Women should be hired because good management should recognize the use of the best possible talent.

I am not saying every woman is going to be committed to the organization, but I am saying there will be greater commitment of women to the organization when they feel they are being treated as human beings and paid about the same as men.

Mr. Chairman: Thank you for a very interesting presentation. I am sure there will be questions from members of the committee. We will have to use a touch of restraint with respect to questions. I will ask members of the committee to limit the preamble and get right to the questions so that we can keep on track. That is no reflection on you, Ms. Gigantes, since you are going first. I am just suggesting we can try to keep on time by limiting opening statements.

Ms. Gigantes: I do not want to ask a question; I want just to thank you for your presentation, which, coming from a different kind of perspective from any of those we have had, says exactly the same thing and says it in an irrefutable way, if one follows this kind of discussion at all. I think it is enormously valuable to us. Thank you.

Mr. Chairman: I have a question, if no other member of the committee has one, but first let me thank you for a very interesting paper. I found it most enlightening. I am going to reread it when I get the opportunity, so I can follow some of the statistical comparisons.

Dr. Crocker: I apologize for rushing through it.

Mr. Chairman: That is not your fault; that is a question of the limitations in the time we have. Are some of the reflections you make in the paper as applicable to the private sector as you may suggest? Most of the thrust of your remarks seems to be directed towards a university environment. That being a government-funded activity, as we are all aware, is it an entirely different situation from what the previous speaker addressed, which is the question of competition and our competitive situation vis-à-vis other jurisdictions?

Would it not be reasonable to argue, when you look at your paper and the overall increase in costs, albeit it is over a long period of time and phased in, that the bottom line is, in fact, an increase in cost to the private sector if pay equity is introduced in the manner suggested in Bill 154? Would you concede that there will be additional costs involved?

 $\underline{\text{Dr. Crocker}}$ : Yes, but those costs are very minor. We are talking of one per cent. If we have a payroll of \$100,000, we are talking of \$1,000 per year. That is the proportion of it.

You are absolutely right; there will be some increase. However, having worked with those organizations, I know exactly what happens. A lot of it is not coming out of general funds. What they are going to say at bargaining time is: "Look, we have only so much money. We have to meet this pay legislation, so we are going to have to come at it from other ways."

As I pointed out, there are ways it can be gained. One of those is the very top salaries. While I do not begrudge those people the salaries they are getting, perhaps a little squeezing of them might gain some of that money.

Mr. Chairman: Union organizations that have come before us--I am speaking of the highly sophisticated and larger union organizations--have made it abundantly clear that although, almost across the board, they support pay equity, they do not want the adjustment in wages to come out of some other sector of bargaining, namely the male wages. What they want is for the male wages to go up as they would normally go up, as you suggest in your paper, showing the different percentile increases.

At the same time, they want the adjustment in female wages, which means that somewhere out of the budget there has to be a net increase in expenditures to adjust for the differential that we all recognize is a reality between male and female workers in certain categories. The alternative, and I am not being argumentive when I say this, I am only pointing out--

Ms. Gigantes: It is a long preamble.

Mr. Chairman: I am trying to keep it as short as I possibly can. I wondered how long it would take you to notice that. However, I have to say in my defence that it is minuscule compared to other preambles I have heard. I just thought I would mention that. I will not be at all personal when I say that. If I happen to be looking at someone--

Ms. Gigantes: You are as personal as the devil.

Mr. Chairman: The point I wanted to make, however, was that the -- what was the point I was trying to make before I was interrupted?

Dr. Crocker: In fact, I was going to tell you that you should hire me to help you with productivity improvement, so you could lower your costs.

Mr. Chairman: I am having difficulty in understanding how that is going to happen, but let me ask one final question with respect to the private sector. The bill as it reads at present calls for a minimum number of employees, namely 10, with respect to the applicability of this bill to the private sector. If you have fewer than 10 employees, you do not come under the umbrella of this bill.

Could you give us your opinion from your experience—and I am looking at smaller companies rather than large, unionized employers—as to whether you agree with the number 10, or do you feel, as some union groups have suggested, that the number should be zero; in other words, all employees of whatever size firms should be included in the bill?

Dr. Crocker: From a personal point of view, I like the number 10 for this particular reason: many of those small firms really are having difficulty getting established. While I sympathize with women-and a great many women are hired there and at some point they must indeed come under the legislation-I think at the moment, in a span of 10 years, it may have considerable hardships on the very small organizations, the small businesses. Ideally, I would love to see it at zero but I am a realist too, and there is no point in putting someone out of business.

1520

Mr. Chairman: Did you have a question?

Ms. Caplan: We have heard from businesses and business groups coming before the committee saying that they are good employers, that they want to be fair employers. They want and feel that many of them have compensation problems which are not gender biased. From your experience of working with companies that have looked at the establishment and found gender bias in their evaluation system, even though the legislation calls for this phase-in period, have you found through experience, because of the philosophy in the business of "Why do you not be good employers?" that they have implemented the adjustment faster than was required or would be required under this legislation and they find ways to adjust those inequities just because of the fact that they have now taken a look at their establishment and want to correct that discrimination which exists?

Dr. Crocker: The answer is yes. But let me qualify that I mostly work with unionized groups where the union has also taken considerable initiative in this regard, and the other group is the University of Windsor which I know is now attempting to implement some redress. The answer is yes, employers are doing it.

Mr. Charlton: I would like to thank you for your brief as well. I would take it from the comments you made about the kinds of comparisons that should happen, for example, in university, that you would agree with the idea of cross-bargaining-unit comparisons where there is more than one union or where there is part of a plant unionized and part of a company not unionized?

Dr. Crocker: I do indeed. When you have seven unions and they represent different jurisdictions, I really feel there should be one job evaluation scheme across all seven. I do not care how many you have. It is very hard if you do not have that to compare caretakers against secretaries and grounds people for example. One group belongs to one union, one to another.

Ms. Caplan: This bill, as you know permits cross-bargaining comparisons when there is no comparable group within the establishment. One of the things we have heard as well from other experts in evaluation is that often different systems are in place within those establishments and the cost comparisons are possible, even though they have different evaluation systems.

The philosophy and the principle behind this bill are, first, to look within the establishment and then across if no comparison can be made within the establishment. Do you have any comment to make on that aspect of this bill which does permit the cross comparison?

Dr. Crocker: The permitting of the cross comparison is good. As I said, this bill did not go far enough for me. What I would prefer is that these cross comparisons would be mandatory, but we have to start someplace and this is a good start. I would like to see cross comparison across the organization.

Ms. Caplan: Would you agree that the test of this legislation will be after a period of time when we see what progress is made under this legislation and whether it has gone far enough?

Dr. Crocker: Yes. I think it is a very emotional issue at the moment and people really do not understand it. Therefore they feel that many things will happen that will never occur. It certainly will not be as onerous as I keep hearing it is going to be.

Ms. Caplan: That is what I keep telling the business groups that come forward.

Dr. Crocker: That is right. Thank you very much.

Mr. Chairman: Thank you, Dr. Crocker. I know we could carry on for some time but we do have some limitations. I do thank you for your presentation and for responding patiently to our questions.

The next delegation is ready. With apologies to Rudolph Shally, we are a little bit late, but I would like to call him forward. We welcome you to our committee and when you are seated comfortably, you can begin your presentation.

## RUDOLPH SHALLY

Mr. Shally: Let me introduce myself. I work as a research associate at Carleton University in the field of high energy physics. That has nothing to do with what I am going to present today. Rather, my background includes some work in philosophy and economics and that is much closer to this topic.

I came to this country six years ago and this is the first time I have decided to talk about any public issue. The reason is, I found this legislation is in striking contrast to what I perceive are the basic values in this society. That is why I decided to come here and talk about it.

What I have in mind specifically -- I am now slightly philosophical, so

please have patience with me--are three propositions, and I say this bill is in contradiction of them.

The first is that you do not have any legislation on income which would order people as to the kind of job they should have. We are free to choose a job according to our free will. The second point is that as a consumer I am free to consume what I want. There is no legislation which would order me to consume this thing or that thing. The third point is that in spite of these two things, there is a certain order in the society, a co-ordination of activities. This is hardly a trivial thing; in spite of those two freedoms, we still have co-ordination of the activities.

How is it possible? Using what sort of economic model or in what terms can I understand these facts? I believe the key to this understanding is the role of wages and salaries. The role of prices, which I would think includes wages as well, is that they show us what we should do and what is valued and demanded by other people. They are not rewards for our efforts, skills and so on.

Let me be more specific. We have to distinguish two different concepts of value. One is value as it is defined in the bill, as the compound of effort, skills and responsibility. This is the objective concept of value. There is another concept of value that is subjective and unrelated to the determination of income. There is the balance of supply and demand for any particular kind of skill or good. I believe it is exactly this difference between compensation in terms of objective kinds of value and what is in fact in place that serves as the only--absolutely the only--means of co-ordinating the information so that the co-ordinational vector is maintained.

This concept of spontaneous order is not of my invention. I believe it is a standard part of economic theory. As I remember, there were four Nobel prizes awarded to people whose lifetime works were centred on this concept of spontaneous order, and I believe this legislation would simply destroy the existing mechanism of maintaining the order. That is the basic point I want to make.

Mr. Chairman: Does that conclude your opening remarks?

Mr. Shally: Yes.

Mr. Chairman: There may be questions from members of the committee. I would like to ask about the exhibit we have before us entitled "Pay Equity Legislation." Is this an article that you wrote?

Mr. Shally: Yes.

Mr. Chairman: Could I ask where that was published?

Mr. Shally: Nowhere. I just typed it and printed it on my computer.

Mr. Chairman: It looks like it is copy out of a magazine or like it was published somewhere, and I was looking for the name of the publication.

Mr. Shally: No. It was not published anywhere.

Mr. Chairman: Are there questions from the committee? There being none, thank you for your submissions to us.

We will take a five-minute break and then will call the Ontario English Catholic Teachers' Association forward.

The committee recessed at 3:29 p.m.

## 1540

Mr. Chairman: This is submission 115, which has now been circulated to you, from the Ontario English Catholic Teachers' Association. On behalf of the committee, I welcome you to our sessions on Bill 154, the pay equity legislation. Whenever you are ready, you can proceed to make your presentation to the committee.

### ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

Mr. Cooney: Thank you very much, Mr. Chairman. We are very happy to be here, and very happy that your committee was able to fit us in even though we inquired about this at a very late stage, only a couple of weeks ago.

The brief you have represents the views of some 23,000 members of the OECTA. Before I go any further I should introduce the second vice-president, Eileen Lennon. I am Jim Cooney, the president.

Ms. Gigantes: Could I ask a question before you begin? What number should we give this?

Mr. Chairman: It is 115. Sorry. I announced that before you came in.

Mr. Cooney: We represent elementary and secondary teachers teaching in about 50 school boards across the province. In the opening pages of the brief is our understanding of what the bill is all about. I do not have the temerity to try to explain to you, the experts, what the bill is about, so I will skip over that and hope you do likewise.

I will go directly to our recommendations. They can be divided into seven sections. We deal with the phase-in period, avoidance techniques, franchises, the understanding of the language of the bill, the posting of the plan, some advisory recommendations and the enforcement of the bill.

We are in support of the bill. We share its philosophy. We believe just remuneration for work is a basic human right and is essential to human dignity.

Others have told you the phase-in period is too long, and we agree. It is especially long for smaller employers. The employees in those establishments are the ones most in need of protection. We recommend that you find some way to bring the provisions of the bill to apply to employers having fewer than 10 employees and that you amend the bill in some way so that employees in all-female work places, such as day care centres, should have access to the provisions of the bill.

Some employers may be tempted to vary the size of their establishments. Since Bill 154 is based on the size of employers, the phase-in period is based on the size of employers. It may invite some employers to consider restructuring their businesses so as to avoid, for as long as possible, coming under the provisions of the bill, and we urge you to investigate some means of making sure this does not happen.

The existence of franchises is a common form of business in the 1980s.

and it creates some problems in the application of the act. We believe that there is a significant commonality of employment conditions among workers for the various franchise outlets of a particular franchise. They will not be protected by the bill because the franchisers are regarded as independent businesses. Groups of franchisees and their major franchisers have the organization and the resources to create pay equity plans, and we would suggest you examine ways in which this could be enacted.

The content of pay equity plans: Bill 154 assumes that posting the pay equity plan and bringing it to the attention of the employees would be effective in ensuring that everybody knows about it. We believe this assumption may be naïve, particularly for those employees in smaller establishments and in relatively unskilled job classes.

We would therefore suggest that there be a statutory requirement that plans be written in plain language. They should be written in a clear, coherent manner, using words with common, everyday meanings, with appropriately divided and captioned clauses and sections in a typeset that can be easily understood.

In addition, plans should contain provisions setting out the rights and remedies of employees under the bill. We suggest that these provisions be prescribed by regulation under the act to ensure both simplicity and consistency.

We are also mindful that in many areas of the province, we have employees whose dominant language of communication is not English or French. We would therefore suggest that you make provisions to ensure that, where a significant percentage of employees speak a language other than English or French, pay equity plans should be published in those other significant languages.

The posting of the plan itself: Bill 154 relies on the posting to ensure that the employees are informed of the plan. There is nothing in the bill, as far as we can read, about how long the plan should be posted. We suggest the plan should be posted for as long as it takes for the bill to be fully implemented.

We know you have given careful consideration to intimidation in the work place. One section prohibits intimidation. However, as a practical matter, these provisions are not sufficient. In most work places, bulletin boards will be in a place in full view of management personnel. It should be expected that if they are under the watchful eye of an employer, employees in some cases will be reluctant to spend the amount of time at that bulletin board examining the pay equity plan to become totally familiar with it.

We would therefore suggest that, in addition to the posting obligation, employers be obliged to provide copies of the plan to their employees, so that they can take them home with them and read them at their leisure in private and therefore become more fully cognizant of what is contained in the plans.

Many employees, despite the fact that pay equity plans may be written in plain language and may be available for them to take home, may still be reluctant to invoke the protection of the act. More assistance may be needed, and that is why we recommend that you create an advisory bureau, which will be useful for employers as well as for employees who have questions or who require assistance in the preparation of pay equity plans.

There should be a distinction made between the advisory bureau and the enforcement branch of the Pay Equity Commission. Otherwise, you will have people who will be reluctant to approach the advisory bureau.

I am almost finished. I am coming to the enforcement section, which deals with section 33, which obliges review officers to monitor the preparation and implementation of pay equity plans, to investigate objections and complaints filed with the commission and to attempt to effect settlements.

An additional obligation of employers to file pay equity plans with the commission will alert the commission and the officers that a pay equity plan is out there and that it needs to be monitored. Such a procedure will also take some pressure off employees to enforce the bill.

In conclusion, I want to reiterate that we support the concept and the philosophy of the bill and we look forward to its speedy implementation.

Mr. Chairman: Thank you very much. We have some questions from committee members.

Ms. Caplan: I believe it was your point 6 which dealt with the powers of the Pay Equity Commission and the recommendation for an advisory bureau. I would like to draw your attention and ask if you are aware of section 28(2)(e), which reads, "Without limiting the generality of subsection (1), the commission"—that is the Pay Equity Commission——"(e) may conduct research and produce papers related to pay equity and related subjects and conduct public education programs related to pay equity and related subjects."

It seems to me that section does exactly what you are suggesting the advisory bureau would do.

Mr. Cooney: In response, I certainly bow to the superior knowledge of the honourable member. I was not aware of that section, and that indeed could be interpreted to allow regulations that would produce an advisory bureau. It would be quite satisfactory.

Ms. Caplan: In fact, I believe this mandates the Pay Equity Commission to do what you requested in point 6. I just wanted to draw it to your attention.

Mr. Chairman: Are there other questions from members of the committee?

Ms. Gigantes: I would like to thank you for the submission. I am kind of curious that, in making the presentation to us, you have not dealt directly with your own work situation. How do these recommendations, in your mind, affect the people who would work as Catholic teachers in Ontario? Do they have a direct affect?

Mr. Cooney: I would disagree with an earlier presentation by the Ontario Public School Trustees' Association, which I believe, from press reports that I read, came before you and said this could have a direct bearing on teachers who have different levels of qualifications. I believe they misunderstood the bill and that it is not indeed applicable, because there are sections of the bill that deal with qualifications. I believe that the bill should apply to school boards. If indeed it does not affect teachers, then we should have nothing to fear from the provisions of the bill. It may affect other employees of school boards, but I do not believe that the assertion of the Ontario Public School Trustees' Association is correct.

## 1550

Mr. Chairman: Are there any further questions? There being none, I would like to thank the delegation for its submission. As I mentioned earlier—I do not know whether you were in the room—we will take your submissions into consideration along with the others we receive. You are number 115, so you realize we have had quite a cross-section of views and opinions expressed to us. We will try to take all those into account when we get into the amendments and the clause—by—clause development of the bill itself, which will take place in a couple of weeks' time. We do appreciate your time and the fact that you made a presentation.

Members of the committee, our next delegation is scheduled for 4:30 p.m. I think we can take another break. I am sorry, Ms. Gigantes; is there something you want to bring before the committee?

Ms. Gigantes: I have a question. You go ahead, and then I will ask the question.

Mr. Chairman: If you stay reasonably close at hand, and if the next delegation comes in a bit early, we can start. It is only one individual. The clerk will be watching for that one individual, and we will start just as soon as he arrives. It is David Bawden, I believe.

Ms. Gigantes: I want to ask about the document that has been filed as exhibit 119. I have difficulty reading the final column title on the second page.

Mr. Ward: I really did not file that as an exhibit; I had it distributed today because it was information relative to questions that had been raised about the number of firms. It says "Distribution of private firms by sector" on the second page.

 $\underline{\text{Ms. Gigantes: I am looking at the column on the far right-hand side,}}$  and  $\underline{\text{I cannot get the title.}}$ 

Ms. Fish: The title has been partly cut off.

Mr. Ward: So is mine.

Interjection: "Firms with employees/percentage total...."

Mr. Ward: Mine says exactly the same, so they are all consistent.

Ms. Gigantes: Can you find out for us what that says?

Mr. Ward: I will find out.

Mr. Chairman: If you are in agreement, members of the committee, we will take a break now. I ask that you not wander too far off so we can start as soon as the next presenter gets to us.

Ms. Gigantes: On page 1 of the same exhibit, how it is we come up with a total female work force of 1,592,000 when we know it is closer to two million?

Mr. Ward: It is private sector only.

Ms. Gigantes: Right. Thank you.

Mr. Chairman: We will take a brief break.

The committee recessed at 3:55 p.m.

# 1619

Mr. Chairman: Good afternoon, Mr. Bawden. It is nice to have you here with us at our committee discussions. I would like to welcome you on behalf of the members of the committee. Whenever you are ready, you may begin your submissions. Following that, there may be some questions from members of the committee. Whenever you are ready, you may get started.

### DAVID E. BAWDEN

Mr. Bawden: Thank you very much.

Mr. Chairman: Please be seated. The reason is so we can pick you up on the microphone for purposes of Hansard, which is the written report of our discussions here in the committee. You can be heard better if you are seated.

Mr. Bawden: I see the microphone there. I must say I am used to standing up, if I ever get around to speaking. However, I do thank you for giving me the opportunity to speak to you. I really think it is one of those unique things in a democracy that any citizen can stand up and speak his piece to the legislators without fear and as an equal.

I have prepared a memorandum on what I am about to say and I have asked that a copy be distributed to each of you. It is quite short. I have sent letters with substantially the same content to each of the party leaders and to your chairman.

Bill 154 has been introduced to the Legislature. If it is made law and enforced, I think it has enormous potential for negative interference in our economy for years to come. I also think it will hurt the very people you intend it to help.

For thousands of years, laws were made by kings, who ruled by divine right, they thought. The king's word was law. One such king was King Canute. He would be but a footnote in history if it were not for the fact that he attempted to repeal the law of gravity. He did not know it was gravity, but the law that he was dealing with was obvious to everyone and its immutability had been apparent to all men.

You will remember that he commanded that his throne be put in the sand at low tide, and then he commanded the tide not to come in while he sat on the throne. I think everybody would have voted for that measure that day. They would have thought it was a great thing for a man to be able to control as he had hoped. Had he succeeded, it would have been a real disaster. That one would have been the end of the universe. He did not see through to the end of what he wanted to do. Fortunately, God did not accommodate him.

Another example in more recent times was in the state of West Virginia in the 1800s. There the legislature, ruling by the right of the majority of voters of that state, passed a law that the value of pi, the ratio of the

circumference to diameter of a circle, was to be four in that state in perpetuity. Think how simple it made things for the school children, the surveyors, the astronomers and parents trying to help their children with homework. The voters loved it.

I would like you to see that those legislators did not really pass a law; they really tried to repeal one, a law that is part of the universe and as immutable as God Himself. They said that in West Virginia the fundamental law of the circle was repealed. Can you picture what chaos that must have caused wherever it was enforced? Finally, common sense prevailed, and the law of the universe operated whether the legislators and the people liked it or not. Can you imagine the problems that would exist today if that law had been passed and recognized as so wonderful and was now the law of the land throughout the world? We would have chaos again. Can you see what our technological society would be like had they succeeded? Again, God did not bow down to the legislators.

I see Bill 154 not as a new law but an attempt to repeal one of the oldest laws of living organisms. It is an attempt to repeal the law of supply and demand. If you look at a colony of the smallest amoebas or at a colony of elephants or whales or anything in between, you will see the law of supply and demand in action. Every piece of historical and prehistorical evidence that can be found shows that this law has applied to every living species throughout a billion years; but the Ontario Legislature is about to repeal the law as it applies to human labour, just as it did with rental dwelling units. Such arrogance, such foolishness. I am sure it will be popular with the voters, who have thought it through even less than the legislators. Do you really think you can be more successful than King Canute or the West Virginia legislature?

There is no doubt that there will be penalties for disobeying if you find you cannot live with the repeal of the law of supply and demand. It will cause all kinds of trouble. It may take years for nature to teach the people of Ontario that the law of supply and demand is fundamental and cannot be repealed, but I do not believe God will change the law of supply and demand to suit the people of Ontario or this Legislature.

I had the fun, I would say, of listening to a CBC radio program, Radio Noon, a week or two ago on this very subject. The question was: Are you in favour or are you not in favour of the content of Bill 154? The overwhelming number of people who called in were in favour. It was apparent that they really did not understand what it was all about. It sounded good to them. Everyone was going to get more money, certainly not any less, and the big corporations and the multinationals were going to pay. I am sorry to say it was just blissful ignorance.

The difficulty now is if you do pass it, what happens when you find that it does not work and that the law of supply and demand goes on? My experience is, and I would say based on what I see has happened already in rent controls, that the legislators will think up a new law to plug the loopholes that they perceive in the unworking of the old law. As you will see, I mention here that the farther to the left of the political spectrum they are, the faster and more foolishly they will proceed.

If pay equity is seen to work in the civil service, because I have heard people say that, I tell you that anything can work in the civil service. There is no competition, no particular need for efficiency and no perceived limit to the ability of the taxpayers to support it or any measure at all. But it is

supported by the competitive economy in this country, which is real and must compete, and they do not understand what this bill is all about. I will ask you to look at this bill for what it really is, defeat it here or recommend against it, and get the Legislature on your side, because I do not believe you can finally repeal such a law.

I would say to you that in keeping with other laws we have had recently, a gram of prevention is worth a kilogram of cure. Thank you.

Mr. Chairman: Thank you, Mr. Bawden. Are there any questions from the members of the committee?

There being none, I would like to thank you, sir, for taking the time to come before us and for your presentation. The committee will be reviewing all of the submissions as we go into clause-by-clause review of the bill. We take into account all of the submissions that have been made to the committee and we will do so with yours as well, sir.

Mr. Bawden: I thank you for hearing me.

Mr. Chairman: Not at all, sir. I thank you for you opening remarks in particular. I am sure the members of the committee would associate themselves with your early remarks at least, even if they do not agree with all of your remarks, with respect to the need for having an open system of government which allows anyone to come before us to make his views heard. In a democracy we have to understand that although we may not always agree, we have the right to disagree. I think that is a fundamental right that we would all honour and protect and we agree with those comments that you made, sir. Thank you very much.

Mr. Bawden: It is nice to be safe in disagreeing too.

Mr. Chairman: When you go to some countries and you realize that some of the weapons that are in the public eye are there for more than just ornament, you realize how lucky we are to be where we are.

Mr. Bawden: You do not have any soliders standing outside, and that is helpful.

Mr. Chairman: Exactly. Thank you very much. If there is nothing further to come before the committee, we will adjourn until 10:30 tomorrow morning.

This has been probably the lightest day we have had in terms of hearings, members of the committee, but tomorrow we have an extremely heavy day and are back to the regular schedule. Again, I would ask for your co-operation, and the chairman will give you his, in keeping on time.

The committee adjourned at 4:31 p.m.





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
TUESDAY, MARCH 10, 1987
Morning Sitting

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)
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# Substitutions:

Rowe, W. E. (Simcoe Centre PC) Ward, C. C. (Wentworth North L)

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor Lupusella, A. (Dovercourt L) for Mr. Knight Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

### Staff:

Evans, C., Research Officer, Legislative Research Service

#### Witnesses:

From the Canadian Auto Workers:
Phillips, C., National Representative
Clancy, P., Area Director
Armstrong, J., National Representative

From the Ministry of the Attorney General:
Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Association of Large School Boards in Ontario: Nelson, F., President

#### LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

## Tuesday, March 10, 1987

The committee met at 10:35 a.m. in committee room 1.

# PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good morning. Representatives of the Canadian Auto Workers are the first delegation before us this morning. Carol Phillips, a national representative, along with two other guests, will be making a presentation this morning. It is numbered 129 in your package.

I would like to take the opportunity of welcoming CAW to our deliberations. We are pleased to have you here and we look forward to hearing your comments, after which there will probably be some questions from members of the committeee. I note you have a relatively short statement to make, so with those few words of welcome and introduction, we would appreciate it if you would introduce the balance of your group, and then you can get on with your presentation.

### CANADIAN AUTO WORKERS

Ms. Phillips: I am Carol Phillips. I am a national representative with the Canadian Auto Workers. My main responsibility is negotiating with private corporations in the aerospace sector.

To my right is Pat Clancy, area director, CAW. His assignment is General Motors Canada; he negotiates with General Motors Canada. To his right is Jane Armstrong, also a national representative with the Canadian Auto Workers. Jane works in our organizing department, so she has a lot of contact with unorganized workers trying to form unions.

We have put before you a fairly brief statement. We have picked out a couple of areas that the Canadian Auto Workers have specific concern about in terms of amending Bill 154. We fully endorse the Ontario Federation of Labour's position. We are part of the core group that put together its statement on amendments, so these are in addition to those. Obviously we do not need to repeat all those points.

At this time, we have 140,000 members, 91 per cent of them in Ontario. They are employed in various work places, mainly in private industry. Approximately 17,000 of those members are women, 12 per cent of our membership.

We appeared before the green paper hearings on four occasions. We appeared in Windsor, where we outlined the unfair differences that can occur between bargaining units on the basis of bargaining power. In Windsor, you also received a submission from Local 89. Specific comparisons were made between male-dominated and female-dominated jobs. In Ottawa, our CAW retired workers made a presentation stressing the indignities suffered by women living on a pension based on a lifetime of unequal wages. In Toronto, we appeared again. CAW Local 1980 concentrated its presentation on exposing the merit

system as the opportunity to manipulate wages that it is. We also participated in the Premier's Labour Advisory Committee on Pay Equity and supervised a research project through the summer of 1986.

As I said in my introduction, we endorse the comprehensive position put forward by the Ontario Federation of Labour, but we have some areas we wish to address specifically ourselves.

Pay equity is not a new issue for CAW negotiators. We have negotiated and sometimes made improvements and sometimes not. Sometimes we have struck for the issue. What we want is assurance that we will never be forced to strike against this injustice again.

It is crucial to separate pay equity negotiations from regular bargaining for wage increases, benefits and working conditions. It is the employer who should be paying for properly remunerating women's work. Other workers should not have to suffer financially in any effort to close the gap between men's and women's wages.

We have only outlined only one example to draw to your attention, because it is a recent one. Last fall, the CAW struck at Thamesville Metal Products, a company it unionized in March 1984. The issues were equal pay and affirmative action. The strike lasted a total of eight weeks, and in the end, the union was successful in removing an inequity for women workers. In fact, since organizing the plant, women's wages have increased by 50 per cent and men's by 30 per cent.

However, to be forced to strike to correct an injustice is a severe hardship. Legislation is the best possible means to avoid it. We have attached for your attention a copy of a news story published at the time of the strike. We draw your attention to the outrageous but, we believe, unfortunately typical attitudes of the employer. That attachment is on the back of our submission. It reads, "Martina Navratilova and Bjorn Borg don't play tennis together and a spokesman for Thamesville Metal Products said it's equally incongruous to think of men and women working shoulder-to-shoulder at his plant."

## 1040

Ms. Gigantes: Do you have a date for that clipping?

Ms. Phillips: That was October, 1986.

Ms. Phillips: We struck there for eight weeks. The two issues were to try to move some of the women into the nontraditional areas and also to raise the wages of the women workers themselves. The union spokesperson in this article outlines that the work the women are doing is of equal value to that of the men; however, they are paid a little less.

The employee, whose name is Schieman, said that "in his 32 years with the plant, he has never had a woman ask for a job in the higher-paying section," the higher-paying section being the men's jobs. "He said if there are some interested in applying, 'they are going to have to have some steroids.'

"Any women who was qualified would have to accept working shoulder to shoulder with men. 'I cannot stop these men from this rotten, dirty talk.'

"Asked why men are not employed in the area dominated by women," ignoring the wage difference, he said, "'I wouldn't want to work with a bunch of women. They'd drive you crazy with their crazy talk. They can stand all day and talk about pantyhose.'"

He goes on to offer a solution. The company having offered a 40-cent increase, the manager said that if they are worried about the wage gap, "Why not give the women 80 cents and the men nothing?" To me, this is a fairly typical example of how employers hope to be able to apply pay equity.

This strike was successful in our terms, because we managed to negotiate 25 cents an hour in addition to the regular wages for those women. We are targeting that corporation for affirmative action, but the fact that we had to strike is certainly something we wish to see addressed and, we hope, avoided in Bill 154.

We have vast experience in bargaining and must be allowed the flexibility under Bill 154 to negotiate pay equity adjustments based on this experience. By and large, we do not utilize job evaluation systems; we find other methods of comparison more successful in achieving results. Unions must be guaranteed the flexibility to use the means their experience tells them is best.

We are also seriously concerned about providing exceptions for pay differences based on historical bargaining strength of male-dominated groups of employees. We can conceive of no fair reason to allow such an exception to remain. It was, in fact, the CAW brief presented to the green paper hearings on March 11, 1986, that drew attention to this issue.

We are also opposed to allowing merit systems to be an exception. They are one of the most common methods used by employers to underpay women. On May 15, 1986, we presented a brief on the issue of merit. We reiterate that merit runs counter to the concept of equal pay for work of equal value and must not be an exception to the pay equity legislation.

In conclusion, there is a very exciting possibility that an amended Bill 154 will go a long way towards correcting the long-standing wage disparities between men and women. The CAW hopes that after the overdue wait for change and the long process of drawing up legislation, the government will not shy away from living up to the promises made two years ago during the election campaign and subsequent accord. To put together a bill that is so full of loopholes as the present proposal would be a betrayal indeed.

Mr. Chairman: Thank you very much. Questions?

Ms. Gigantes: As you are probably aware, we have had a presentation from General Motors of Canada. Basically, they told us they did everything right for women and if we were going to introduce equal pay, we were going to put GM in the position of spending \$1 million just to study the project, to prepare some kind of proof that they already did everything this kind of legislation would require. This would add \$2 to each car and would put them in a very disadvantaged position in terms of competitors in the United States. Could you give us a couple of comments on that?

Ms. Phillips: I will let Pat Clancy respond to that, especially to the comment that they do everything right in this area.

Mr. Clancy: I do not think General Motors does everything right. Because of the industry we are in, the way we negotiated in the industry did a hell of a lot for them.

If you take a look at pay equity in the industry, our problem is not necessarily the same as it is out of the industry. We have a very close differential between wage classifications, and those wage classifications were not negotiated based on a female population in the work force. They were basically negotiated on a male population in the work force because they are inherent in what happened in collective bargaining, not only at General Motors but also at Ford and Chrysler. Until 1976, there were very few women working in the automobile industry, none in Ford and I do not think any in Chrysler, so those wages were not based on any kind of pay equity.

There were some cases where we did have to negotiate because we had certain classifications that fell under the old women's seniority provisions that went out of existence in the 1970s, around 1974, and so some of those classifications had to be brought up. They were brought up because of the flow of male workers flowing into some of those occupations and female workers flowing into some of the other occupations. On that premise, based on our bargaining strategies, they were brought up, not because General Motors was doing anything right but, because of the way we bargained, it made things seem right.

Regarding its statement about a cost of \$2 per car, I am not really sure how it would justify that, and I cannot disprove that.

 $\underline{\text{Ms. Gigantes}}$ : Do you think it would price itself out of the market if it had to apply this kind of legislation?

Mr. Clancy: I do not think the legislation would price it out of the market. I notice in their remarks, its representatives made some suggestions that it would cost them money and they might have to substitute automation to reduce labour costs. Anybody who knows General Motors knows right now it is implementing more automation, more robotization than any other industry in Canada, and it is not doing that to get prepared for pay equity. I do not know that it could really automate its industry much more than it is doing right now.

 $\underline{\text{Ms. Gigantes}}$ : They were intimating that they would reduce the number of women they employ, presumably in office jobs, by automation.

Mr. Clancy: General Motors right now, as far as its salaried employment is concerned, has a program where it is reducing the salaried employment by between 17 per cent and 20 per cent. It has nothing to do with pay equity, and I imagine a lot of the salaried personnel who will leave General Motors will be women.

Any reduction you have in the work force in the Big Three is an automatic reduction of women workers in the work place because they are the low people on the totem-pole. If there is any major reduction, that major reduction is going to be women in the work place, and it is not necessarily going to be because of wage equity. That is a marketplace reaction. I guess you could make all those straw bogymen if you want, but the reality we know is that things happen just because of the marketplace. If we never get pay equity, those things are still going to continue to happen.

Ms. Gigantes: Maybe we had better call them straw bogywomen.

Could you give me an example of what it is you dislike about the merit system?

Ms. Phillips: We made a presentation, as I said, in Toronto on the merit system that involved Ford Electronics. Ford Electronics is a subsidiary of the large Ford Motor Corp., and it still has a merit system within the bargaining unit that we have fought to get rid of.

One of the problems we found was that in the application of its merit system, there was a large disparity in wages that the company justified by education. It said it awarded merit for education and in fact most of the women were promoted from within, came into the lower levels, managed to work their way up within the corporation and did not necessarily bring with them the educational standards the young men, new hires, were bringing in. It justified differences of up to \$300 every two weeks for the same work, based on merit.

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We lodged an equal pay for equal work complaint under the existing legislation, and merit is an exception under equal pay for equal work. We have had a hard job, under equal pay for equal work, getting an unfair merit system out; so we certainly do not want to see that sort of a situation extended. Now that is in the unionized work place. In a nonunion work place, with a complaint-based equal pay for equal work system, I cannot imagine the inequities that must be out there, so we do not want to see that perpetuated under equal pay for work of equal value.

The employment standards people did say to us that in fact we may have had an equal pay for work of equal value complaint rather than an equal pay for equal work complaint if the legislation was there and if merit was not an exception. That was enough to convince us that it is an exception that needs to come out.

Ms. Gigantes: I have another question but if other people would like, they should go ahead.

Mr. Chairman: Are there other questions from other members of the committee? Back to you, Ms. Gigantes.

Ms. Gigantes: I want to ask about the implications of the legislation as it is before us now for unorganized work places. You have some experience trying to organize unorganized work places. We are looking at a bill that does not offer women who work in establishments with fewer than 100 people an equal pay plan. In fact, it does not spell out what information might be available to such women to make a complaint. Can you give us some perspective on what that means in an unorganized work place of that size?

Ms. Armstrong: Perhaps I can use an example which will be commonly known to all of you here, and that is Magna International. If you take a look at it, it prides itself on having approximately 10,000 workers who work in plants, generally speaking, with 100 or fewer employees; so you would therefore be excluding a major employer in this province. The majority of its plants are in this province. You would be disadvantaging women, but particularly immigrant women, because Magna is a major employer of new immigrants, and particularly women, in the auto parts sector. That is one very glaring example of how this legislation would not be extended to a major employer.

Ms. Caplan: From 10 to 100 employees are covered by the legislation, and I just wanted to clarify that you understood that Magna, for example,

would not be exempted from the legislation. The onus is on the employer to implement the legislation. The difference is that there is no requirement for a posting of a plan; but if employers do not do it, then they are subject to a complaint. I just wanted to make sure you were clear on that.

Ms. Armstrong: Yes, the exemptions in terms of the posting; but you have to understand that in unorganized work places, we are facing situations that we run into on a day-to-day basis-gross cases of discrimination on the basis of race and sex, and these people are afraid to go forward in any kind of complaint procedure for fear that they are going to lose their jobs. I think any kind of exemption in terms of that kind of posting would create difficulties.

Mr. Chairman: I am sorry to interrupt. Ms. Caplan, you had another supplementary?

Ms. Caplan: Yes, there was actually one point. Are you aware that the bill provides that no one's job be placed in jeopardy because of a complaint? Also, you used the example of Magna. I believe it would be covered in the over-500 because it is in Ontario, and under the definition of "establishment" it--

Ms. Phillips: Can you make us that guarantee?

Ms. Caplan: Perhaps we can just ask for some clarification on how that would work.

Mr. Ward: I think you said earlier it has more than 10,000 employees.

Ms. Armstrong: Yes.

Mr. Ward: It would have to post separate plans in each establishment, but it would still have to post plans if it is the employer of more than 100 employees in Ontario.

Ms. Gigantes: Within a geographic division.

Mr. Ward: An employer does a plan within a geographic division, but if it has more than 100 employees province-wide, it still has to do a plan. Being under 100 in a geographic region by itself is not an exemption from the requirement to do a proactive plan.

Ms. Phillips: Magna certainly comes under different names, different divisions, and has managed very nicely to get around other legislation. It does not count itself as one employer of 10,000 people, which would be a problem, of course.

The other concern is that, even with protection against putting forward complaints, we have had a lot of experience in that sort of a protection of no recriminations under the Health and Safety Act. It has all been bad experience on no recriminations, and that is also in organized work places. In unorganized work places, to have employer control over an equal pay for work of equal value plan is certainly, to use the Magna example, not in the best interests of the women working there.

Ms. Armstrong: I would also like to use one other example of an unorganized situation. Under the equal pay for equal work situation, it is complaint-based legislation. I ran into a situation last summer, in organizing

in the auto parts sector, where the employer, to attempt to defeat the union organizing drive, hired a large number of temporary employees through a private agency.

In this case, the employer was paying the agency so many dollars per person brought into the work place. What we discovered was that the agency, in its greed, was paying women less than men for doing the same job as they came into this plant. In this situation, the women approached me about the unequal pay, but until they got a union in, they were not at all about to raise any complaint, because they knew they would be harassed right out of the job; no question about it.

Ms. Gigantes: Women, whether organized or unorganized, under this legislation are going to be called upon to take lots of initiative, either through their union or individually.

What I am trying to get is some sense from you about whether it is a help in a smaller, unorganized work place to have a plan posted. Would that help an unorganized woman or group of women come to grips with what the legislation can do for them and use it?

Ms. Phillips: Yes, it would.

Ms. Gigantes: Even if it is a bad plan, employer-created?

Ms. Phillips: It at least draws the attention of the employees to the fact that there is supposed to be a plan in place. I think a posted plan helps to draw the attention of the employees to the situation and it gives them a foot in the door to questioning the plan itself.

Ms. Gigantes: Can you tell us how many men were employed at the Thamesville plant you described to us?

Ms. Phillips: The Thamesville plant was a small plant of 27 workers. I cannot answer exactly how many men and how many women were there. All I can tell you is that they were segregated on a gender basis.

Mr. Baetz: I would like to go back for a second to your observations on the merit system and the fact that you are opposed to allowing the merit system to be an exception, because it is one of the most common methods used by employers to underpay women.

I would like some clarification. Is it the merit system or merit per se you do not like, or is it the potential of the merit system to be abused or misused in connection with this? Are you opposed to the merit system or are you opposed to the potential abuse of it?

Ms. Phillips: Both, in our situation. First of all, we are opposed to the concept of merit or pay for performance.

Mr. Baetz: Period.

Ms. Phillips: Period.

Mr. Chairman: Thank you very much. That appears to be the last question, so I would like to thank the CAW for coming before us and expanding our information with respect to your interpretation and your concerns about the bill. We will take your views into account when we get into the amendments.

The committee recessed at 11 a.m.

## 1110

Mr. Chairman: We have a quorum again so I believe we can start with our next delegation, the Association of Large School Boards in Ontario. Fiona Nelson is president. Is she here? I understand that Lorraine Flaherty is going to be here as well.

 $\underline{\text{Ms. Nelson:}}$  She is, Mr. Chairman. She is sitting back but keeping an eye on me.

Mr. Chairman: If you would like to bring any other members of your delegation forward, you are welcome to do so. In the meantime, let me welcome you on behalf of the committee. We look forward to your presentation and your views on Bill 154. When you are ready, you can begin your presentation.

### ASSOCIATION OF LARGE SCHOOL BOARDS IN ONTARIO

Ms. Nelson: Thank you, Mr. Chairman, ladies and gentlemen and members of the committee. It is a pleasure for me to make this presentation on behalf of the Association of Large School Boards in Ontario. I would like to assure you that I do not normally speak in baritone. I have a bit of bronchitis, and I hope that will not get in the way.

ALSBO had a committee working on the bill and on the subject of pay equity. While we are here with just a single page of comments on the bill, that is simply because we wanted to make sure you understood that ALSBO, which is composed of 17 of the largest boards in this province and, therefore, in this country, does have a position on pay equity.

It is obvious there should be justice in the work place. It is obvious that pay equity is an idea whose time has come. In fact, half our member boards have already voluntarily entered into discussions or, in fact, implementation of pay equity, some as long as four and five years ago. What we are planning to bring to your attention are a couple of matters that we think should be part of your considerations as you work on this bill.

It seems to us that there are vast numbers of workers in the public sector, in the nonprofit sector, who need to be protected. They often are more vulnerable workers. They are often what have been referred to as female ghetto jobs such as day care, cafeteria workers, education assistants and that kind of thing. It does seem important to us that these people do have the protection of legislation ensuring that they will not be exploited in their work.

When I make these points to you, I want to make it clear that part of our difficulty with the implementation of the idea of pay equity is that there are very amorphous standards and language in this area that we think need to be cleaned up. One of our suggestions to you is that, in promoting the idea and making it possible for people to move forward fairly quickly in this matter, it would be very useful if models or manuals could be prepared to assist people with the quite extensive job of job description, of job analysis; the idea of making sure that we are all talking the same language.

We are not talking about standardization of jobs, but simply helping people to overcome some of the problems with job descriptions and job evaluations that are essential for the proper implementation of pay equity.

I can speak from the experience of my own board, the Toronto Board of Education. We started down this road four years ago. We set goals and timetables three years ago. We required the assistance of a consulting firm to do that, and that was expensive. We then did job evaluations and some pilot projects two years ago. We are doing job descriptions and more pilot projects, and have required the assistance of other consulting firms. We are going to have some models ready by June. The Toronto board has already spent well over \$200,000 on external consulting in order to get this far.

In addition, there has been a very large expenditure of staff time on and off the job, as well as the secondment of certain staff in order to get some of these things working properly. It is essential that there be an immense amount of sensitivity on the part of people doing these job descriptions because many staff people are very conscious of their status and are worried about the fact that the evaluation is of them rather than of the job. Therefore, it is not something that can be done in a hurry or without a great deal of consideration for the feelings of the people involved. For that reason, we think it is extremely important that there be some kind of help, if you like, from Queen's Park to organizations attempting to do this in good faith.

Secondly, I think it is important to point out that equal opportunity, affirmative action and pay equity, are all part of a package of justice in the work place. We are particularly conscious of this in education because of course half our client population, our students, are girls. We think it is extremely important that we set a good example of being equitable employers. When we are working on this, we are trying to do it in such a way not only to be fair to our employees, but to give out the appropriate messages to our students.

Therefore, it seems to me it is very important that you understand that the concept is appropriate and supported, but it can very easily bog down in the nitty-gritty of trying to implement it fairly and justly and without enormous expenditures. We are concerned that because the expertise is not in-house in most organizations, people will be going to a variety of consultants and there may be a tremendous disparity between the advice that one organization gets and another, which will make it very difficult to give the appearance of fairness.

It is for those reasons that we are making our comments to you today. On the single sheet that we have given you, which contains an appendix of some of our member boards which are part way down the road on this, we have three recommendations that we would like to draw to your attention.

The first is that you issue some form of guidelines, model job description and job evaluation manuals, anything that would give some kind of a common base to the decisions on the level of pay involved so that there can be some objectivity to the decision making.

Secondly, we would like to suggest that the provincial government, through its appropriate ministries, provide public and nonprofit organizations some kind of pay equity grants to offset the quite considerable costs in actual money and staff time that will be involved. In the case of education, we have the previous example of the affirmative action grants, which have been remarkably helpful in assisting boards to get on with this job. I think it might be useful to look at that as a possible model.

Finally, we urge you to undertake a very comprehensive public awareness

campaign to educate both the public and employers about the justice issues involved in pay equity. It does seem to me that when I see full-page advertisements with silly things like pay police as a spectre to try to scare people away from what is obviously a case of elemental justice, we need to do some work in this area. I suggest this would be a very useful undertaking for the provincial government to consider.

Finally, this is not a recommendation but perhaps a suggestion. Inasmuch as some of the people who have already been before you and others are suggesting that there are constitutional issues here, it might be worth your while to consider the possibility of a constitutional referral, as was done with Bill 30. It might take the rug out from under some of the more virulent opposition to this idea and might give you as well some useful guidelines on which to get along with your work.

That is really all I had to say. I would be quite happy to answer questions.

Mr. Chairman: Thank you very much. We will move on to questions now. Some members of the committee have indicated they wish to raise questions.

Ms. Caplan: Yes. Mine was more a comment. All three of your recommendations really focus on what I believe is clause 28(2)(e) of the bill, which deals with the powers and the mandate—and I would underline "mandate"—of the Pay Equity Commission. This clause particularly states that the commission "may conduct research and produce papers related to pay equity and related subjects and conduct public education programs related to pay equity and related subjects."

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It is my understanding—and I would ask whether you agree—that this will give them the mandate to do the kind of public education you have referred to. Also, since we have the phase—in and the period when not only large employers but also small employers will be seeking guidance, they will be able to go to the Pay Equity Commission for advice and assistance on the different types of plans which are available. We have heard the concerns from several businesses regarding the need for consultants and lawyers. In fact, it would seem to me that if the Pay Equity Commission is functioning as the legislation intends, they will be able to get that kind of guidance from the commission. Are you familiar with this section of the bill? Is your criticism that it is not explicit enough or do you feel it could be further defined in regulation?

Ms. Nelson: The point I am attempting to make is not that there is not the possibility for that kind of thing in the legislation. I would like it to be a lot more explicit and up front. Clearly, people who are well disposed or willing to go along with this will get on with the job. However, there will be a fair degree of intransigence and hanging back, and it might assist the process a great deal and remove some of the fears people have if there were more upfront and public stuff, not on request but in advance of request or interest. The people who are disposed to make the requests are not the ones we need to worry about particularly. I think a fair number of people are very concerned about this wretched spectre of pay police and all that embodies. That was what pursuaded me to suggest to you that I think you need to do it in advance, rather than after the fact.

It also seems to me that if people know in advance they do not have to

go out and spend thousands of dollars on consultants and lawyers but that there are some guidelines or definitions they can work with, that would greatly assist the work of the commission and the employers who would like to do it and perhaps would overcome the resistance of many who do not want to touch it with a barge-pole at the moment.

Ms. Caplan: By way of summing up--it is not really a question--it is my belief that because of this particular clause in the legislation, that, in fact, will be the lion's share of the work the Pay Equity Commission will be doing, particularly during the first year. They will have the expertise to be able to assist, so I am glad you brought that to our attention. Thanks for your brief.

Ms. Nelson: Thank you. I would like to draw to your attention that several of our members do have experience at the moment that might be of value. The Toronto Board of Education is a very large employer of almost 10,000 people, with an enormous number of unions and staff associations that have had to be worked with. I think the experience of organizations such as that might be of value and would also prevent the commission from having to reinvent the wheel.

Ms. Caplan: I suspect the commission will find that extremely valuable. Because of the proposed phasing-in, the intent of the legislation is that the experience as a result of the first phase will be of benefit to those who are later in the process. To be able to glean all that advice and experience, centralized through the Pay Equity Commission, will mean you will not have reinventing of the wheel or duplication of things which are already in existence. I thank you for those comments as well.

Ms. Gigantes: If I may just follow on the discussion we have had on this subject, I think what you are suggesting is a little bit more than having the commission go out and convince everybody that it can be easily done and that this might be a good model. You are also talking about having ministries take some responsibility within their own scope of work. If we think about the fact that probably 350,000 of the two million women who work in Ontario actually work in public agencies of one kind or another, I think your suggestion is a very good one. I can see that could be followed through in terms of the Ministry of Community and Social Services, the Ministry of Education and other ministries that have a direct relationship with people services at the community level. It is a valuable suggestion.

You represent the largest of the boards in Ontario, 17 members. What range of employee groups do your members cover?

Ms. Nelson: I can certainly quote from my own board, the Toronto Board of Education. The largest group is the teachers, but they have had pay equity for decades, so that is not our concern at the moment.

Ms. Gigantes: I am really trying to find out what is the smallest employment group represented by one of your member boards.

Ms. Nelson: Do you mean the total number of employees?

Ms. Gigantes: Yes.

Ms. Nelson: Paradoxical as it sounds, I suppose that is the Metropolitan Toronto School Board. It is essentially a fiscal body rather than

an operating board, and it just runs the schools for the trainable retarded. I suspect they have just a couple of hundred employees.

Ms. Gigantes: It would range from 10,000 down to a couple of hundred?

Ms. Nelson: Yes.

Ms. Gigantes: When we look at the kind of information you have provided on the back of your sheet, we see an enormous range in estimated costs of these various systems. I was curious about why the Waterloo County Board of Education stuck out. Did they have a job evaluation system in place or were they starting from scratch? Would they have done this as a method of management in any case or were they setting out to do it simply for pay equity purposes?

Ms. Nelson: I think it was a management decision that it was necessary to do job descriptions. They have clearly done a great deal of work, internal to the workings of their own board, that also will result in pay equity. I suspect the Toronto board's plan will cost a great deal by the time it is in place, because it is intended to cover a great deal more. It is intended to spur on the efforts of the affirmative action, equal opportunity and curricular spinoffs. I think boards of education in particular tend to look at everything they do in terms of the model it will provide, so they tend perhaps to be more comprehensive than others.

Ms. Gigantes: We had a presentation from the Ontario trustees' association.

Ms. Nelson: Which Ontario trustees' association?

Ms. Gigantes: It was the Ontario Public School Trustees Association. They suggested to us that if we introduced equal pay and included the teachers, we would destroy the teacher pay grid and create confusion and chaos for boards across Ontario. You do not give off any message of that nature.

Ms. Nelson: Teachers already have pay equity. There is no gender-based discrimination in pay.

Ms. Gigantes: They suggested to us that they pay their teachers on the basis of qualifications, which did not relate to skills.

Ms. Nelson: I was not here for that presentation.

Ms. Caplan: They asked for an amendment that would define "skill" as including "qualifications," which would satisfy them. They were not satisfied with just the word "skill," because they did not use the word "skill." They use the word "qualifications." They wanted to be satisfied that the definition of skill included qualifications. We assured them that was the fact. I think they were satisfied.

Ms. Gigantes: You do not have that apprehension?

Ms. Nelson: No. Teachers have not had gender discrimination in pay for decades.

Ms. Gigantes: Can I ask about the Toronto board's efforts, which you described very briefly for us? Has there been red-circling involved in any of your implementation?

Ms. Nelson: I think there will have to be, but I am not sure what the extent of it will be. Part of the problem, as I am sure you are aware, is that very often we are comparing things that are difficult to compare because of the fact that some of these areas are almost ghettos for one sex or another. Presumably, there will have to be some of that.

Ms. Gigantes: Has there been cross-comparison of collective agreements?

Ms. Nelson: We have spent an immense of time working very closely with the unions to allay concerns about what will come out of this. It is very difficult for me to say whether there have been comparisons. It is very difficult for people not to make comparisons. I suggest there have been very strong pushes towards doing job descriptions and evaluations in such a way as to prevent too much of that kind of thing. It is hard to say, though, because there are places where it is virtually impossible to see a distinction between certain jobs, and those things are going to arise implicitly, if not explicitly.

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Ms. Gigantes: Across bargaining units.

Ms. Nelson: They may. A word that causes terror in education circles is whipsaw. Obviously, that is something one would want to avoid.

Ms. Gigantes: When you look at the plan you are working on now, do you have a sense of how much it is going to cost you? How will that relate, in your view, to the ability of boards to undertake the actual equal pay adjustments?

Ms. Nelson: I do not yet have a fix on how much it is going to cost the Toronto board. I suspect it will cost something. I think it is quite clear that groups such as cafeteria workers, who are almost all female, do not get paid very well. A few years ago, our board was so ashamed of what had been negotiated for the cafeteria workers that we raised it unilaterally. There are certainly areas such as that that do cause us concern at the moment.

Ms. Gigantes: Your association is made up of the larger boards in Ontario, and it is the larger boards that, as a percentage of their expenditures, receive the lowest amount in terms of provincial funding, normally. Where do you see the responsibility for making up the cost of adjustments to the wages of women? Do you think that should be borne by the local taxpayers, or should it be borne by the province?

Ms. Nelson: It does seem to me that it is a matter of justice. Obviously, there are major discussions under way at the moment about the sharing of the burden of the costs of education generally and, presumably, that will be part of the picture.

I am sure you know the problem is that autonomy and paying the bills do tend to go hand in hand, and these are constant arguments that we have. In my suggestions to you about the possibilities of some kinds of provincial grants during the phase-in period, I am speaking of provincial grants as was done with affirmative action. Once everything is in place, it is my hope that we will have finally arrived at that Utopian day when we have an equitable funding of education in this province. That being the hope, I assume the cost of this will be borne in that as well.

Ms. Gigantes: I have been puzzled by the fact that, whereas public sector employees through their organizations have come before this committee and indicated very strongly that they believe there is a necessity for the province to take on the financial responsibility for pay adjustments, we have not had the same kind of argument from public employers, except through the Ontario Library Association.

Ms. Nelson: I could be flippant and say we are so accustomed to paying our own bills that it would not have occurred to us. I do not know.

 $\underline{\text{Mr. Baetz}}$ : I have a supplementary question because it relates to cost. I guess I can assume from what you have replied to Ms. Gigantes that you really do not have a price tag for the overall cost this might result in for your association for the larger boards?

Ms. Nelson: That is correct.

Mr. Baetz: You do not have that at the present?

Ms. Nelson: Part of the reason is that not all the boards have gone into it yet and the other thing is, as you can see from the appendix sheet, they are all doing it in different ways and they are at different stages of development. It is extremely difficult to arrive at a price tag. We do not have the price tag for the analysis as opposed to the price tag for the actual difference in the pay packets.

Mr. Baetz: I am talking about the pay packets.

 $\underline{\text{Ms. Nelson:}}$  We do not even have the price of analysing the problem yet.

Mr. Baetz: In view of the fact that quite a few of these boards have already started and are in various stages of implementing pay equity, would you guess that the price tag is not going to be astronomical, or would you not want to venture a guess on that?

Ms. Nelson: I think it could be extremely high. If you look at one of our boards, the Halton Board of Education, which is paying consultants \$900 a day, unless it is extremely careful about when it called in its consultants, it is talking about an enormous bill.

Mr. Baetz: An enormous bill just for consulting?

Ms. Nelson: Yes. This is one of the reasons I am suggesting, as I mentioned earlier when I was talking to Ms. Caplan, that if there were some assistance with manuals and models from the commission, from the provincial government, it might prevent some real excesses in that area.

I think the analysis of the job evaluations and descriptions is going to be quite expensive. It is essential for good management for it to happen anyway, and this has obviously been the genesis of it with some boards. Even so, it might avoid some bad mistakes being made along the way if there were some assistance with standard definitions and models.

I am sorry, but I cannot help you with the price tag. I think at this stage it would be absolutely a guesstimate.

Mr. Baetz: For implementation plus consultation now?

Ms. Nelson: Yes.

Mr. Chairman: Could you give us some idea of what the cost of consultants was with respect to the exercise? Is it on the back? I did not see that.

Ms. Nelson: We have given you a bit of it on the second sheet. I am afraid it is not comprehensive.

On the basis of the eight boards that have already voluntarily undertaken it, it has ranged from \$2.5 million in the Waterloo board, where they were doing a pile of things in the same job, to \$900 a day in the Halton board. There are a couple of other boards, Hamilton, for example, that are at the moment just at the stage of evaluating what consultants have to offer.

I really cannot give you a fix on it. What this has shown us is that there is such a disparity in both the questions being asked and the answers being given, it would seem obvious that a little assistance from the provincial government would be of great value to people.

Ms. Gigantes: On that point, you did say that for a board the size of the Toronto board, which has 10,000 employees, you estimate paying \$200,000.

Ms. Nelson: That is what we have paid to one consultant for doing the job evaluations, job descriptions and the staff training that has gone into that. There has been an immense amount of staff development in that area. The little project for the consultants, the goals and timetables one, I think was about \$5,000 or \$6,000.

Mr. Baetz: Who are these consultants likely to be? Are they Peat Marwick, are they Hay Management Consultants? Who are they, anyway?

Ms. Nelson: They can be. One of our boards does use Hay.

Mr. Baetz: I want to apply to one of them at \$900 a day.

Ms. Nelson: I do not know that it is the Hay people who are \$900 a day or if that is a different consultant. I know the Toronto board used Avebury consultants and used--oh, dear, I knew I would forget the other one. I am sorry, the name has gone from my head, but there are a lot of them. They are management consultants, personnel consultants and a variety of people like that.

Mr. Baetz: They are likely to be all kinds of different firms. In other words, if Peat Marwick were to do five or six boards, you would think Peat Marwick would not have to reinvent the wheel every time it went into the-

Ms. Nelson: It has not always been our experience with consultants that they do not do that.

Mr. Baetz: I thought that.

Ms. Nelson: We are talking about people who have a fairly healthy streak of entrepreneurship.

Mr. Baetz: Yes, I get what you are saying.

Mr. Chairman: On the basis of the work that has been carried out by the consultants on your behalf and with your board, would you say the methodology that was used with respect to the weighting factors for job comparisons would be in compliance with the main thrust of this bill?

Ms. Nelson: I would think so. We have not done a deep analysis of this, but our feeling is that what we have done so far would be in compliance. Certainly, it is in compliance with the spirit, and I suspect it is in compliance with the letter. Even with the amount of difficulty with vocabulary that there is in any new endeavour-well, new for us-I think there are some standards that can be referred to; so I suspect it is fairly close.

Mr. Chairman: Did the consultant or did the board at any time use, for comparison purposes, a group within the board and another target group outside? You mentioned the cafeteria workers specifically, where you unilaterally increased the wage because, to use your words, the board felt embarrassed about what they were being paid.

In coming to a decision as to what the proper pay should be in that case or in any other case you might be able to cite for purposes of our information, were all your comparisons done in-house or did you look outside of the board's personnel?

Ms. Nelson: I am not sure about that, because I was not in the actual meetings where these sorts of things were decided. Presumably, the consultants would have outside experience they would bring to bear. Whether they actually made overt comparisons for the purpose of internal things, I do not really know.

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Mr. Chairman: Was the consultant's report you received a tabled public document?

Ms. Nelson: Yes. It was several documents. I have been chairman of our status of women committee for some years, and there were some progress reports coming through all the time as they proceeded down the road with the various pilot projects and discussions. They were all done in the public session of the committee, so they are public.

Mr. Chairman: The reason I ask is that I was going to make a request, if possible, to make those consultants' reports available to this committee. I believe we have a consultant coming before us tomorrow, who will be talking about the methodology used for comparison purposes. It is part of the mechanical application of the bill that we want to be certain of.

If it is not a problem for you to provide us with that information, I would appreciate having it, and certainly I will share it with the members of the committee. I would like to get some idea of how those comparisons are made and whether they do comply with the intent of what Bill 154 calls for. If you have problems with it--

Ms. Nelson: I cannot imagine what those problems would be, and since we are just across the street, I should be able to get them back to you as soon as they can be Xeroxed.

 $\underline{\text{Mr. Chairman}}$ : That is why I asked whether it was a tabled public report. If you are using it in camera for your own purposes or if there are

matters of negotiating that have to be kept confidential, then I certainly will not press the point, but if you can make it available, I would appreciate it.

Ms. Nelson: As you know, our board in particular has virtually nothing in private, so I do not think that would be a problem.

Mr. Chairman: I like that kind of enlightened political approach. It is just marvellous and, as you can see, our meetings are all open for anyone to attend. Mr. Baetz, you had another supplementary. As I keep asking questions, your supplementaries are getting better all the time.

Mr. Baetz: Your questions are so stimulating. Back to the consultants now. You are an umbrella organization and you know that all your 17 members are going to have to go through this exercise. Would it not be feasible for your organization to provide this kind of service at a cost--you could get a grant from the government or whatever--to your member organizations, so they all would not have to go through the same thing?

Ms. Nelson: It is an interesting idea, actually. Now that the legislation is likely to become a fact fairly soon, certainly sharing the experience of the boards that have already started down the road and making some recommendations for other boards, so they would not have the same potholes to fall into, would be very sensible.

The idea of your providing us with a grant in order to do that sounds very attractive.

Mr. Baetz: I noticed Ms. Caplan was nodding her head when I suggested it.

Ms. Caplan: The nodding of the head was that I think many of the professional associations and organizations representing different industry groups across this province might well want to take that kind of leadership position within their own industries and, with the assistance of the Pay Equity Commission, speed the process of the implementation and ensure there was little duplication. I was really just nodding my approval of that kind of leadership coming from the kinds of associations we see coming before us, not only in the teaching sector but also right across the board.

Mr. Baetz: This appears to have been a very fruitful morning we have here.

Ms. Nelson: Great. Just sign the cheques, and I will leave any time.

Mr. Chairman: Thank you very much. We appreciate your coming before us.

Ms. Nelson: I will send that stuff over as soon as I can get it copied.

Mr. Chairman: Perhaps you could get it to the clerk. Are there any members of the committee who would like to see the reports I am speaking of? We will table them with the clerk and they will be available to the committee. Thank you again.

Ms. Nelson: Glad to be of assistance.

Mr. Chairman: Before we break for lunch, we had two delegations tomorrow, one of which is the consultant I referred to earlier. The second delegation was a company that was coming from Windsor, Huron Steel. They were to be here yesterday and rescheduled for Wednesday. We now find they have cancelled.

There will be two items of business. Tomorrow morning there will be no sitting of this committee; so you have the morning to do those things you are unable to do during other mornings when you are tied up.

In the afternoon, we will have two things. We will have the consultant's report from the Council of Ontario Construction Associations. They will come in to discuss part of the matter I was pursuing with our last delegation regarding the consultants' comparisons, etc. We will also have a very important subcommittee meeting and I would like the subcommittee representatives to be here for that because we have got a fairly extensive list of items I have to get your direction on and I need your views on.

Just off the top of my head, I guess the subcommittee meeting will probably take the better part of an hour, hopefully less depending on the amount of debate. Those are the two things on for tomorrow.

We have a full list as you know today. We will be going through from two o'clock until six o'clock tonight. Tomorrow will be an easier day.

Ms. Gigantes: I wonder if I could make a proposal to the committee. A week ago I was at a meeting at which I was able to see a film called Women At Work. It was released 10 years ago in 1977 and it dealt with some of the issues that this legislation addresses in a very telling way, with many examples and interviews with women. Much of it seemed to be exactly the kind of problem that we are trying to address in this legislation 10 years later.

I am wondering whether committee members would be interested in having a look at the film. I found it enormously useful. It is a half-hour presentation. I understand that it is available through the Metropolitan Toronto Library.

Mr. Chairman: If we could get it tomorrow, being the type of day that it is, it would be an excellent opportunity for the members of the committee on your recommendation that it would be helpful for us to see it.

Mr. Polsinelli: It could be the first item prior to our clause-by-clause debate. If it is only a half-hour film, it may set the tone for the debate.

Mr. Chairman: I really would like to see it done tomorrow if that is not too fast for us to move on it.

Mr. Polsinelli: Too fast. I am not going to be here.

Mr. Chairman: My suggestion is that we hear the delegation, then see the film and then go into the subcommittee reports so the other members of the committee can take leave at whatever time we start the subcommittee meeting.

Ms. Gigantes: Could I offer an alternative, which is that we might try to gather at 1:30 and see the film then if we can.

Mr. Polsinelli: I might not be here tomorrow.

Ms. Gigantes: You will not be here tomorrow?

Mr. Polsinelli: No. It is my problem, but I would like to see the film.

Mr. Chairman: As a point of information, the parliamentary assistant will not be here this afternoon. He has another responsibility. I have indicated that this should not be a problem since we are into hearings and we have staff here and obviously he can catch up and read Hansard later. I just thought I would mention that to you.

Mr. Polsinelli: You led into the discussion of Hansard. Do we have any indication as to the length of time that it takes to obtain Hansard?

Mr. Chairman: I was wondering when someone would ask that.

Ms. Gigantes: A week and a half.

Mr. Polsinelli: You see the problem is that, as I indicated earlier, I am not going to be here tomorrow and I am very interested in the consultant's recommendation regarding the construction industry and the research that they did in the construction industry. I would like to read his deputation and his presentation prior to the clause-by-clause debate.

Mr. Chairman: With the numbers of committees sitting, in fairness to the Hansard office, I know they have some problems. However, let me ask the clerk if she has any indication of the problems.

Clerk of the Committee: I understand Hansard is almost totally caught up; so we should be able to get it out in two or three days.

Mr. Polsinelli: Excellent.

Mr. Chairman: That is okay.

Ms. Gigantes: On the film, will we decide to try to screen it tomorrow or will we decide to try to screen it before we begin clause-by-clause discussion?

Ms. Caplan: Let us do it tomorrow if possible, but perhaps there will be an opportunity this afternoon if you can make it available. If it is available on cassette, maybe Mr. Polsinelli can have a private viewing.

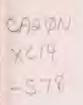
Mr. Ward: We are losing two days of clause-by-clause debate, your caucus and theirs.

Mr. Chairman: Yes. Let us do it tomorrow. That is what I was suggesting.

The committee recessed at 11:48 a.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
TUESDAY, MARCH 10, 1987
Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Lupusella, A. (Dovercourt L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

### Staff:

Evans, C., Research Officer, Legislative Research Service

### Witnesses:

From Tourism Ontario Inc.:

Michener, R., President and Chief Executive Officer

Wenborne, D., Chairman, Labour Committee

Stanton, B., Member, Labour Committee

From the Ontario Confederation of University Faculty Associations:

Epstein, H., Executive Director

McDonald, J. I., Chair, Salary Committee; Professor, Department of Economics, York University

Baines, B., Chair, Status of Women Committee; Professor, Faculty of Law, Queen's University

From the Women's Perspective Advisory Committee:

Herdman, P., Executive Vice-Chairman

Caccia, N.

Gomes. E.

From the Industrial Welding Products Co.:

Logan, W. D., President and General Manager

From the Communist Party of Canada (Ontario):

Massie. G., Leader

McCuaig, K., Secretary, Women's Committee

From the Metro Action Committee on Public Violence Against Women and Children: Marshall, P., Executive Director

From the Ontario Trucking Association:

Cope, R. R., President

Bradley, D., Director, Economics and Assistant to the President

From the Ontario Women's Directorate:

Todres, Dr. E., Assistant Deputy Minister

### LEGISLATIVE ASSEMBLY OF ONTARIO

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

## Tuesday, March 10, 1987

The committee resumed at 2:08 p.m. in committee room 1.

# PAY EQUITY ACT (continued)

Xonsideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Members of the committee, I believe we can get under way with this afternoon's discussions. The first group to come before us consists of three gentlemen representing Tourism Ontario Inc. The president is Roly Michener. Perhaps Mr. Michener will introduce the other members he has brought forward from his organization. After that, whenever you are comfortably settled in, you can share with us your thoughts on Bill 154. We welcome you and look forward to hearing your presentation.

### TOURISM ONTARIO INC.

Mr. Michener: It is indeed my pleasure to introduce the chairman of Tourism Ontario, who is also chairman of our labour committee, Dean Wenborne. He is to my immediate right. To his right is Bruce Stanton. Mr. Stanton is a director of Resorts Ontario, one of our member associations, and an active member of our labour committee.

We thought we would start by telling you a little bit about our organization. Tourism Ontario is a private, nonprofit federation of tourism and hospitality associations whose more than 6,300 member businesses account for a sizeable portion of the commercial lodging, recreation, travel transportation and victualling services available in Ontario.

### 1410

Tourism Ontario appreciates this opportunity to engage in constructive dialogue with members of the standing committee on administration of justice about Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

We believe it is very important that legislators, the media and the public understand the size and nature of our industry in the context of our submission on this very serious subject of equal pay for work of equal value.

The Ontario tourism and hospitality industry stands alone as the largest private sector employer in the province. In 1986, the Ontario tourism and hospitality industry accounted directly for an estimated 214,600 person-years of employment, which in turn sustained indirect and induced employment amounting to an additional 165,900 person-years of productive work. Combined, these employment statistics represent nine per cent of Ontario's employed work force.

In addition to providing numerous permanent and upwardly mobile positions for college-educated and university-educated persons, our industry

provides many thousands of stable, long-term advancement opportunities for professional service staff. Further, it should be noted that the Ontario tourism and hospitality industry is by far and away the largest provincial employer of women, youth, visible minorities, semi-skilled and unskilled persons, part-time, casual and seasonal workers.

It is well known that the tourism and hospitality industry is very labour intensive. Wage and benefit costs in our industry are very high, representing upwards of 60 per cent of fixed and variable operating expenditures in many enterprises.

The Ontario tourism and hospitality industry must compete in an international market wherein there are no trade barriers, quotas or protective tariffs of any kind, and wherein the perceived cost, price, value and quality of our products and services must withstand stiff and constant competition from American, foreign and offshore jurisdictions whose labour and operating costs are considerably lower than ours.

The Ontario tourism and hospitality industry is an environmentally clean and renewable resource. It stimulates regional development in areas of the province where economic alternatives are few, are in precipitous decline, or are nonexistent. This is particularly true in and around numerous single-industry communities throughout the province that have suffered or are suffering from the effects of an overabundance of output and destabilization of markets for agricultural products and mineral resources; declining forestry reserves; industrial rationalization; and technological displacement.

According to Statistics Canada, and a comprehensive paper entitled Ontario Study of the Service Sector, which was released by the Ontario government in October of last year, the service sector, in which our industry is a leading and vital mainstay, now accounts for 73 per cent of employment and 70.2 per cent of gross domestic product, and will account for an estimated 80 per cent of all new jobs that will be created in our province over the next decade.

Finally, it should be noted that total consumption, personal, corporate, property and business taxes collected by municipalities, the province and the federal government as a direct result of the acquisition, preparation and sale of tourism and hospitality goods and services in Ontario during 1986 alone amounted to a staggering \$3.96 billion, or 45 per cent of gross provincial tourism and hospitality industry revenues. These taxes support our extensive education, health care and social assistance programs, police and fire protection, and the construction and maintenance of sewer, water and road systems, among others.

I would now like to turn over the next portion of our brief to  ${\tt Mr.}$  Wenborne.

Mr. Wenborne: Mr. Chairman and members of the committee, you have heard a little about our association and our industry. Now we would like to deal a little with an overview of the proposed legislation.

"Equal justice, rights and freedoms for all" have become hollow words in our society with little meaning or substance in fact or in law. The more governments, politicians and special interest groups press for so-called egalitarian treatment under the law, the more flawed and fragile our democratic principles and practices become.

For every social compensation or employment right or benefit bestowed upon individuals or groups of individuals, there is in most instances an equal and offsetting detrimental impact on others.

In our opinion Bill 154 is another step, and a significant one at that, towards the dismentling of employer rights, freedoms and obligations in a market-driven economy wherein compensation is currently based on individual employee training, education, merit, experience, productivity, motivation, commitment, enterprise, seniority, resourcefulness and responsibility, which in turn are weighed against various economic factors including labour supply and demand, prevailing market conditions and competitive forces.

An editorial in the February 16, 1987, edition of the Financial Post sums up the frustrations of many employers in dealing with Bill 154 which, while well-intended, is seriously flawed and unnecessary. It reads as follows:

"The Ontario government is pressing shead to apply the principle of equal pay for work of equal value to the private sector. The bill, now in committee, could more accurately be called the 'equal pay for different jobs measure.'

"The legislation is designed to remove gender discrimination in wage levels. Why, for example, the government asks, should an experienced female administrative secretary in a school be paid less than the male caretaker?

"It is, though, far from clear that discrimination is a significant factor in male/female wage gaps. But beyond that, and beyond the difficulty and even unfairness of trying to compare jobs by objective standards of worth, there is another concern about the Ontario bill: It attempts to use the wage system to achieve social equity.

"It is a question of separation of function. Wages are prices, and as such are instruments of allocation...their proper role is to match buyers and sellers in the labour market so as to prevent shortages and 'surpluses'...i.e. unemployment. They are not instruments of distribution...the apportioning of incomes in line with collectively agreed principles of social justice: as, perhaps, sexual equality. That's the job of the tax and transfer system.

"As its critics point out, the market is incapable of ensuring distributional equity. That remains true however much you jimmy the rules. Bending market mechanisms such as wages to the attainment of distributional goals not only leaves supply and demand unbalanced it enforces a distribution favouring those with the most market power. The strong take advantage of the new regime, and prosper as they always do. The weak bear the costs of the distortions.

"Under the Ontario bill, some women will surely win higher wages...but it's likely to be at the expense of other women. Many of those who keep their jobs will gain by the very means that others are priced out of theirs. And the losers won't be the rich, the educated, the articulate, but those at the bottom, with few skills, little experience; those most easily replaced by machines, in industries with the slimmest margins. The danger here is that by forcing wages up for underpaid women, employers may opt to lessen their wage load by hiring fewer women.

"This will not happen overnight...the bill at least has the merit of caution. But the experience of rent controls in Ontario is instructive. The effects are gradual at the start, but gather and accelerate. And each new

distortion calls forth legislation to try to redress its effects, so encrusting the market by degrees. Ontario is stuck with rent.control, at least for the present. The government should realize, while there's still time, that the equal pay bill will also cause serious distortions in the market."

Employers in Ontario are being subjected to a never-ending flood of proposed and pending labour and social legislation, all of which is very costly and very little of which is beneficial to business proprietorship, earnings or enterprise. It is small wonder, then, that every week several large and medium-sized Ontario businesses are closing their doors permanently or rationalizing and consolidating operations elsewhere at the expense of numerous jobs in this province. This tragic litany will continue unabated and exponentially to the continuous creation and legislation of costly social programs, labour laws and regulations in Ontario.

# 1420

Unfortunately, too few legislators have had to meet a payroll or manage a competitive enterprise which is profit oriented and market driven. Equity in employment practices, regardless of gender, and compensation for equal or substantially similar work are legislated in the Employment Standards Act and the Human Rights Code. Our federation fully supports these principles.

Clearly, as we shall point out in this submission, Bill 154 is arbitrary, subjective and may very well militate against "the redressing of systemic gender discrimination and compensation for work performed by employees in female job classes."

Our federation believes that Bill 154 raises several important and relevant constitutional questions which are serious enough to warrant referral to the courts before proceeding further. Key definitions in the bill, such as the dominance criteria, which permit comparisons between jobs that are 60 per cent female-dominated to positions that are 70 per cent male-dominated; the gender-based nature of the bill, which only applies to female job classes; and the exemption of smaller businesses are all issues which should be subjected to court challenges under the equality provisions of the Charter of Rights prior to any enactment of this bill.

No other jurisdiction in the world has adopted the proactive model for implementing pay equity in the private sector as is being proposed in Ontario. There is no private sector experience anywhere which provides guidance on Bill 154. Our federation seriously questions why there has not been a significant and detailed study conducted of a broad cross-section of private sector businesses in Ontario as to the potential costs to employers in developing pay equity plans, the potential impact of Bill 154 on employment levels and the potential impact of this bill on employer-employee relations and labour relations generally.

Given the dramatic and far-reaching nature of pay equity legislation in this province, it is unconscionable that all the publicly funded studies and reports on this issue have not been released, well publicized and made available to any and all parties interested in this serious matter. We do understand that some of this information is now becoming available, but we are not sure how much and we are not sure how easily available. Where are the notes on the public consultations and recommendations from the Consultation Panel on Pay Equity, the studies conducted for the Ministry of Industry, Trade and Technology on the impact of Bill 154 on small businesses and several written legal opinions conducted for the Ontario government on the

constitutionality of this bill, and where and how can they be readily obtained?

Surely all such documents should be tabled, debated and discussed as part of the public hearings process initiated by this standing committee, and all interveners, such as ourselves, should be invited to reappear before this committee once sufficient and adequate time has been appropriated to vet and examine these documents thoroughly.

Bill 154 "provides for the redressing of systemic gender discrimination in compensation for work performed by employees in female job classes." The government's green paper asserts that the residual or remaining inequity between the average annual earnings of men and women in Ontario, after accounting for such factors as hours worked, seniority, education and rate of unionization, is approximately 10 per cent to 15 per cent, and that this is attributed to job segregation. There is an implicit admission that women are concentrated in lower-paying occupations.

Bill 154 is designed to deal with only that portion of the wage disparity resulting from occupational segregation in a given business establishment. On an economy-wide basis, the portion of the wage gap that can even remotely be impacted by such legislation has been calculated to be two per cent or three per cent at best, this at a cost to employers of countless millions of dollars, let alone the assured strain on employer-employee relations this legislation invites.

Are employers responsible for occupational segregation? We think not. Rather, we believe women are concentrated in certain occupations largely because of a lack of awareness and uninformed choices, i.e., less education and training and early socialization, or because of informed choices, such as parenting or the balancing of other responsibilities. We respectfully submit that the way to obviate these problems is through enhanced education and training and retraining initiatives directed at women to encourage them to pursue nontraditional and higher-paying occupations.

We take serious exception to the supposition in Bill 154 that employers are assumed guilty until proven innocent. The onus is on the employer to prove that the compensation system used in his or her business is nondiscriminatory. This, we assert, is contrary to common law tradition and the approach taken in other antidiscrimination legislation.

How does one objectively define and assign value to totally dissimilar jobs? A gender-neutral compensation system as called for under Bill 154 does not provide a satisfactory response to this question. The comparable worth doctrine is inherently subjective and therefore potentially gender-biased. Nonbiased job value or worth measurement is impossible and the central and germane issue in the determination of the criteria of worth is essentially one of determining whose values will be reflected in any pay equity plan.

Jobs can only be equitably valued for individuals by employers, based on employee training, education, merit, experience, productivity, motivation, commitment, enterprise, seniority, resourcefulness and responsibility. These factors cannot and should not be divorced from economic factors such as labour supply and demand, prevailing market conditions and individual business viability and competitive forces. Anything less than these considerations is a serious distortion of the free market system and an unfair and unwarranted

intrusion into the confidential relations between private sector employers and their employees.

The Ontario tourism and hospitality industry is comprised of numerous sizes and types of enterprises, many of them small and family owned, employing fewer than 20 and upwards of 100 and more persons on a seasonal basis, as fewer than 20 and upwards of 100 and more persons on a seasonal basis, as the owner or owners and staff performing a broad range of functions on a the owner or owners and staff performing a broad range of functions on a recurring basis or as business dictates. To facilitate this necessary recurring basis or as business dictates. To facilitate this necessary versatility, job duties in many business enterprises represented by our federation are not generally defined in formalized job descriptions, nor can federation are not generally defined in formalized job descriptions, nor can federation are not generally defined in formalized job descriptions, nor can federation are not generally defined in formalized job descriptions, nor can federation are not generally defined in formalized job descriptions, nor can federation are not generally defined in formalized job descriptions, nor can federation are not generally defined in formalized job descriptions.

I will ask our confrère, Bruce Stanton, to continue with our recommendations for the committee.

Mr. Stanton: These being our concerns about the pay equity bill, we already have a number of recommendations that we ask the committee to consider.

The definition of "establishment" for the purposes of Bill 154 should be amended and clarified. Where a company operates several business units, each with separate personnel and compensation policies, each unit should be viewed as a separate establishment. Such units compete in different markets and operate with different profit margins. Variations in compensation to employees operate with different profit margins. Variations in compensation to employees operate unit reflect economic conditions, not a gender bias. Distinctive and in each unit reflect economic conditions in different geographic divisions should not variable operating conditions in different geographic divisions should not form the basis of a pay equity comparison.

"Establishment" should therefore be defined as being both at the same geographic location and, within that location, as a common set of personnel and compensation policies covering a definable group of employees.

Bill 154 should not require comparisons across bargaining units or between union and nonunion employees. Such comparisons go far beyond eliminating gender-based pay discrimination and are an open invitation to unnecessary and unwarranted employee unrest.

As we previously articulated, many business enterprises in our industry do not hire staff on the basis of definitive single employment tasks or responsibilities. They do not have, nor can they afford, personnel specialists and lawyers to deal with existing regulatory agencies, let alone to comply and lawyers and conditions imposed by Bill 154. Their businesses are with the terms and conditions imposed by Bill 154. Their businesses are high-cost, labour-intensive and low-value-added enterprises wherein the margin of profit or loss is dictated by uncontrollable variables such as weather and other competitive factors.

Tourism Ontario recommends that all Ontario tourism and hospitality enterprises employing fewer than 50 persons be totally exempted from all provisions of this pay equity bill. We recommend that the minimum incumbency provisions of the purposes of defining a job class under Bill 154 be no less than level for the purposes of defining a job class under Bill 154 be no less than 10 persons, to make gender predominance tests meaningful.

It has been estimated by experts that employer legal and consulting costs of defending a single complaint filed with the Pay Equity Commission by employees or a bargaining agent could be as much as \$100,000. Without some

recourse, an employer who successfully defends a complaint could find himself or herself in serious financial difficulty and/or bankruptcy.

Tourism Ontario strongly recommends that Bill 154 be amended to provide for the total reimbursement of all employers' costs from the Pay Equity Commission or other government body upon vindication of a complaint filed by an employee, employees, their agents or a bargaining agent.

# 1430

We see no merit in the creation of a new and costly Pay Equity Commission or in the hiring of a phalanx of pay equity officers. Creating such a large, single-purpose bureaucracy would, in our opinion, be self-serving and self-perpetrating long after it has accomplished its principal objectives. This body, no matter how objective and impartial, would be perceived as being committed to raising women's wages by whatever means.

Tourism Ontario recommends that the functions of the Pay Equity Commission and pay equity officers be assigned to the employment standards branch of the Ontario Ministry of Labour, wherein qualified staff already exist to interface with employers on numerous other interrelated labour standards and practices.

It is the fervent belief of our federation that compensation inequities based on gender can most effectively be reduced by implementing measures that encourage job mobility. Educating, encouraging, supporting and training women who are entering, are already a part of or are returning to the work force in nontraditional, higher-paying work will directly address the occupational segregation problem at which Bill 154 is aimed. Artificial stimulants such as those enshrined in the Pay Equity Act will serve only to create needless friction in the work place and fewer employment opportunities for those persons, regardless of gender, who most need them.

That concludes our submission.

Mr. Chairman: Thank you for an interesting presentation. We will move now to questions. I ask the committee to share the allotted time so that we can get questions from each of the parties to the extent possible.

Ms. Gigantes: Thank you for your brief. I wonder if you could tell us a bit more about your federation because you are a federation of associations. Do you collect figures on the size of firms within those associations? When I say size of firms, I am thinking of where this bill might apply and, therefore, how many employees a firm might have.

Mr. Wenborne: We do not have those figures and have never attempted to collect them. I can tell you, and I suppose this is nothing that would be new to anyone, that our federation comprises employers as large as CP Hotels down to the tiniest little northern tourist camps. Employment in those enterprises would have the same range. It is our feeling, and I think that is why we used the figure of 50, that it would exempt most of our employers who will really be unable to cope with this legislation.

Ms. Gigantes: Can I ask you about wage levels? We have been told, and it makes sense when you think about it in terms of common sense, that a lot of small employers in fact will not find much differential in terms of pay in women's work and men's work as it is traditionally done, because a lot of small employers are paying close to minimum wage. I am wondering if you can

make an estimate, based on your knowledge of your association membership, of how many of the employees you are talking about in total, which is more than 200.000. might fall close to that minimum wage line?

Mr. Wenborne: It is a guess, but I would say 60 or 70 per cent, particularly in the establishments that are catering food and certainly in a lot of the seasonal tourist establishments. When you say close to minimum wage, I guess I am thinking of within \$1 or \$1.50 an hour of minimum wage. I think it is a very real fact that most of us who employ have to pay substantially more than minimum wage for personnel with the skills we need. We are no different from every other employer in the province in that regard. When skills are in short supply or high skills are required, we have to pay to get them. I could use my own small business as an example. The highest-paid people on my staff are women.

Ms. Gigantes: How many employees would you have?

Mr. Wenborne: We are a seasonal employer, but it is between 28 and 32. It will vary a little, depending on different things.

Ms. Gigantes: You would not expect this legislative proposal to affect you in terms of your employees.

Mr. Wenborne: It is hard to say. It depends on whether an employee were to file a complaint and I was then harrassed extensively by somebody from the government. Then it is going to affect me, whether there is any basis to the complaint or not, and I am going to have to defend that.

Ms. Gigantes: Have you ever had to defend an employee complaint?

Mr. Wenborne: Yes, with the Ministry of Labour.

Ms. Gigantes: You talk about the range of firms that exists within the federation that you represent. We have had some large employers whom I guess would probably be apart of your membership. For example, Cara foods and VS Services have come before us and told us that it would be impossible for them, through all their facilities, to develop equal pay plans. It would be impossible for them to treat all their employees in their various establishments and types of business through one equal pay plan.

They had great difficulty coping with this whole notion, and yet when I look at their net profits, they seem to be doing quite well. One wonders why firms of that size, or CP Hotels, would not be able to take on this kind of initiative where you might find that, in fact, you had to do nothing at all. In fact, you are hiring women at your top pay levels.

Mr. Wenborne: I think when you use the term "net profits," it should be related to the amount of investment that is in those particular industries or businesses because net profits do not really mean anything.

Ms. Gigantes: Their retained earnings are very good too.

Mr. Wenborne: I am not familiar with them so I am not going to comment on those particular ones. I guess it goes without saying that it would be easier for any large corporation that currently has personnel officers and probably job descriptions and so forth to be able to cope than it would be for very small businesses. I do not think we need to elaborate on that reality. As to whether those kinds of businesses can cope, the large ones, I think CP

Hotels is pretty well unionized in Ontario, like most of the big operations, so it turns it over to its bargaining agent to handle. There is going to be a cost factor that we will all pay for if they find that there is discrimination based on gender.

However, those food companies—by the way I think I should say that, at present, the Ontario Restaurant and Foodservices Association is not a member of Tourism Ontario. It has been a couple of times and it is in and out, but we keep hoping that it will come back to our fold. We are not able to speak directly for any of its members and I do not think there is much use in my commenting on whether they can cope with this. I do not know the intricacies of their business. If one of my confrères would like to try, that would be fine.

What is important to consider is that, whether it is them, a small business or the largest hotels, we feel this is going to cause distortions in the labour market and the distortions in the end will not address the problem. We feel the problem should be addressed in a different way and we are talking about that 10 per cent or 15 per cent wage gap that exists. That problem should not be addressed by legislation. It should be addressed in a different manner all together.

Ms. Gigantes: The wage gap is larger than 10 per cent or 15 per cent.

Mr. Wenborne: Well, nobody has illustrated that. I do not think the actual wage gap is larger than that. All of the experts and economists who have looked at it have laid the other 25 per cent or 23 per cent to the fact that many women work part-time. They do not work the number of hours for reasons of either home life or parenting or whatever the case may be and choose not to try to enter into the higher-paid employment areas.

Ms. Gigantes: I see how you are using the term. I will come back if there is time at the end.

Mr. Chairman: No, the time is pretty well used up unless there is a quick question. We have only half an hour for this group.

Mr. Baetz: I just want to say that we certainly appreciated your presentation and we are glad to see familiar faces again. In terms of Tourism Ontario, you have mentioned, of course, that you have a vast range of members, from the Royal York to the outfitters out on the Albany River.

Mr. Wenborne: Right.

Mr. Baetz: How much of your time, energy and activity as Tourism Ontario do you direct to the smaller operators, as compared to the larger ones?

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Mr. Wenborne: A disproportionate amount goes to the small ones; justifiably so, because obviously they are more defenceless than the large corporations in our province.

Mr. Baetz: Among those smaller ones, how many really would have fewer than 10 employees?

Mr. Wenborne: As I said to Ms. Gigantes before, we do not have any figures on that. There may be figures available but Tourism Ontario does not

have that information. If we are looking at northern tourism, I would think it would be safe to say, with my best educated guess, that 70 per cent or 75 per cent of our member businesses have fewer than 10 employees, even the ones that are not members across the north. Many are family-run operations with two or three or four or five employees.

Mr. Michener: On a seasonal basis, they would employ more.

Mr. Wenborne: There are quite a few large seasonal employers. In looking at the legislation as proposed, I myself have not seen how it even deals with seasonal employers. The interesting aspect, and I think perhaps the committee will be interested in this, is that seasonal employers can change their jobs, job descriptions and employees every year. How do you cope with that under this legislation, assuming you have 10 or more employees?

Mr. Baetz: I imagine you would have a job description for the jobs.

Mr. Wenborne: I do not have any. I do not have a single job description. Everybody I employ is expected to do two or more tasks. I think I am probably on the slim side. I think a lot of our employers in the north would have people doing four or five different tasks in a given day.

Mr. Baetz: If those with fewer than 10 employees would be excluded, as they are, it would remove a very large portion of the membership you are very concerned about and spend a lot of time with.

Mr. Wenborne: Yes.

Mr. Chairman: Regretfully, gentlemen, we are going to have to bring this discussion to a close because of a tight afternoon agenda, but I do thank you on behalf of the committee for your presentation. We will certainly be taking your views into account when we get to amendments to the bill. Thank you very much for coming before us.

Mr. Wenborne: We appreciate the opportunity. We hope you do consider some of these concerns we have. If it is not considered now, it is going to be awfully hard after the legislation is enacted.

Mr. Chairman: I would like to call forward the Ontario Confederation of University Faculty Associations, the 2:30 p.m. delegation. Would you come to the front, please? Welcome on behalf of the committee. With very little preamble, I will say we look forward to your presentation when you are ready to share it with us. We thank you for coming before us this afternoon. Whenever you are ready, you may get under way and start your presentation.

### ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS

Mr. Epstein: I am Howard Epstein, executive director of OCUFA. Appearing with me are the chairmen of two of OCUFA's committees. On my left is Professor Ian McDonald of the department of economics at York University. Professor McDonald, who teaches economic theory, is chairman of OCUFA's salary committee. On my right is Professor Beverley Baines of the faculty of law at Queen's University. Professor Baines teaches in the area of human rights, human rights legislation and the Constitution. Although now in the full-time employ of OCUFA, I myself was formerly on the faculty of law at Osgoode Hall Law School.

I must apologize, Mr. Chairman. I think in order to put our brief on the record, I must read it. I know you have a copy in front of you. I will go through it. It is not a very long document and I hope to get through it quite quickly so we can deal with questions.

OCUFA is very pleased to be appearing before the standing committee on administration of justice with respect to Bill 154. We are a confederation of university faculty associations and we represent the approximately 12,000 academic staff and university librarians in the province.

Only some 16 per cent of the full-time faculty in the province are female. If those on contractually limited, full-time appointments are removed from the total, this figure shrinks to somewhere between 13 per cent and 14 per cent of the full-time faculty. The problems of women faculty have received a great deal of OCUFA's attention recently. We have attached to our submission for you our employment equity policy, which we have adopted and sought to implement on different campuses around the province.

OCUFA and our national body, the Canadian Association of University Teachers, have long supported the concept of equal pay for work of equal value. In fact, CAUT endorsed the concept in 1961, more than a decade before the Canadian government committed itself to the International Labour Organization's Convention 100 on equal pay for work of equal value. This was based on a growing awareness that the salaries of women faculty in Canadian institutions of higher education were not equal to those of their male colleagues.

Studies conducted by many groups, among them the Association of Universities and Colleges of Canada, CAUT, the Canadian Federation of University Women and the Council of Ontario Universities, have all come to basically the same conclusion, that women in academic life are not being treated with fairness and justice. It is in this context that OCUFA was extremely dismayed to hear that the COU proposed to you last week that university faculty be expressly excluded from Bill 154.

We feel very strongly that there is no justification for such an exclusion. We believe that universities should be in the forefront of improving the status of women and quote to you the remarks of Thomas Symons and James Page in their 1984 report, Some Questions of Balance, a study of the Canadian university system published by the AUCC. It said:

"As institutions of higher learning they"—the universities——"ought to set an example and to provide at least some measure of leadership to other institutions, both through their research on matters affecting women and by their treatment of women. There can be no question that women ought to have social, economic, political and cultural equality with men in our society. But they do not. Universities ought to be in the forefront of change in respect to the status of women in our society. But they are not. Even in terms of their own treatment of women, universities have sustained and perpetuated the status quo, as their many in-house reports on the status of women make abundantly clear."

Despite efforts to remedy salary discrimination against women, the evidence over the past 20 years shows that women have still not achieved equity with men. Statistics for 1981-82, quoted by Symons and Page in their report, show that the median salaries paid to women faculty were lower in every academic field and in almost every age group within each academic field. Statistics for 1984-85 continue to show that the average salary for women in

every academic rank is lower than that for men. Female professional librarians have achieved wage parity with male librarians everywhere except in Ontario, where female professional librarians earn, on average, 91 per cent of male salaries.

The Council of Ontario Universities maintains that all universities have procedures to correct salary anomalies and that these, if rigorously applied, are more useful than pay equity legislation. First, not every university has an anomalies component to its salary policy. Second, few salary anomalies funds are used expressly to correct gender-based differences in salaries. Third, the tools that are best suited for such use, multiple regression or matched pair studies, or both, have been used at very few Ontario universities to correct anomalies, and where they were used, it was in the early to mid-1970s.

Anomalies funds, where they exist, are often used to offset issues of marketability. Anomalously low salaries are often a result of low starting salaries. We should not lose sight of the fact that women often start at lower salaries because there is an absence of alternative opportunities for them or because they are in lower-paid disciplines and ones for which there are fewer opportunities on the outside. In sum then, if female faculty members are not underpaid, then university administrations have nothing to worry about. If they are undervalued, then there is no justification to exclude them from the legislation.

COU appears to make the assumption that faculty could be excluded from the legislation because faculty, as a single job class, is male dominated. We take exception to this assumption. It is far from clear that the legislation, as it is currently written, would be interpreted so that professors constitute a single job class. Could individual departments or separate faculties not constitute a job class? Could nursing professors be one class and engineers another? Could ranks, such as assistant professors, be defined as a class? Exempting faculty would preclude clarification and consequent pay adjustments.

With respect to the gender-predominance aspect of Bill 154, OCUFA is in agreement with the briefs submitted by groups such as the Equal Pay Coalition and the Federation of Women Teachers' Association of Ontario. They, along with other organizations, assert that there should be considerable flexibility in defining women's and men's jobs for the purpose of identifying those that are undervalued. Thus, we support the Equal Pay Coalition's argument that a numerical cutoff would be an open invitation to manipulation by employers to avoid equal pay and that it would arbitrarily exclude large numbers of women from coverage. Legislation that requires equal pay for work of equal value should provide for universal coverage.

This bring us to a general point about exclusions from legislation. In order to request that a particular group be excluded from a piece of legislation, a very good case has to be made for it. We fail to see that any such case has been made by the Council of Ontario Universities. It chose rather to favour an interpretation of the legislation's terminology that would make it difficult to apply the legislation to faculty. Thus, even should later regulations or amendments to the legislation change the interpretation of such terms as "job class," female faculty would not benefit since they would be part of an excluded group. Nor have they adequately dealt with the consequences of excluding faculty, such as their subsequent lack of availability for comparative purposes inside the university.

We are pleased that the legislation covers part-time workers. This is an area where women are represented in large numbers. In fact, part-time work is increasingly becoming characterized as a feminized occupational ghetto. You may not be aware that it is virtually impossible to attain statistics on part-time faculty in the universities. It should be a requirement of the legislation that data on part-time workers be accessible and available.

It should also be a requirement of the legislation that employers not be permitted to change the classification of part-time workers to casual workers, thereby avoiding equal pay. We therefore suggest that a part-time worker be defined in the legislation as in the 1983 Commission of Inquiry into Part-Time Work, "A part-time worker is one who works less than the normally scheduled weekly or monthly hours of work established for persons doing similar work."

With respect to the costs incurred by pay equity, we stress that government must be prepared to cover the costs of pay equity in public sector institutions. Institutions that have been underfunded in the past should not be forced to cut back on programs in order to pay their female employees equitable salaries. In its brief, the COU argued that, without adequate funding, pay equity could only be achieved by cutting back on other initiatives. If pay equity costs, and we all know it does, it is simply because women's labour is consistently undervalued and because women have been subsidizing the economy.

The argument that the government cannot afford to increase funding to the universities to permit the implementation of pay equity does not wash with us. Women full-time faculty, part-time faculty, university librarians, support staff and service workers are taxpayers. We believe they support the legislation and expenditures to enforce it. In conclusion, our position is that pay equity principles should be applied to all sectors of workers.

My apologies. I hope I have not trespassed on your time too tediously by doing that. We invite any questions.

Mr. Chairman: Thank you very much. We appreciate your presentation and we will go right on to questions.

Ms. Gigantes: I would like to thank you for your presentation. We have had it suggested by some employers that if we leave in coverage for part-time workers who work more than one-third full-time hours, employers will be encouraged to hire their part-timers at less than one-third full-time hours. I was curious when you discussed the question of part-timers on page 6. I sense you really mean you want the legislation to cover part-time workers. Why did you choose to try to redefine what "part-time" means rather than say that part-time should not be an exemption?

Mr. Epstein: That is literally all we would like to say. The particular route is not so precious to us. We agree with that objective.

Ms. Gigantes: We have also had the interesting phenomenon that public sector employers coming before us have not raised the issue of who pays for public sector equal pay adjustment, except in the case of the Ontario Library Association, which represents both employers and workers in libraries. In fact, we have not had one other case of a public employer coming before us, either as an association or as an individual employer, and saying, "We think there should be provincial responsibility."

Have you any sense of what the discussion is in terms of the Council of

Ontario Universities or why that would be happening? I asked them about that when they came before us.

Mr. Epstein: I was not actually present when the COU was here to hear your question and its response, but I did read its presentation. They seemed to be a group that did identify the government as the responsible body for funding any consequent costs to pay equity, and they specifically raised that. They raised it by saying that if this does not occur, other government initiatives such as faculty rule, centres of excellence and accessibility would have to be cut back in order to pay for pay equity. We do not agree with this at all.

Even though other public sector employers may not have raised it, the university presidents, acting as employers, certainly raised it and, I guess, were simply putting in their claim to try to lay the groundwork for making a claim for extra funds, although that is an argument they will have to make in the political arena along with the other supplicants for government funds. I think Professor McDonald wants to comment too.

Mr. McDonald: I was just going to say that I think their argument is purely an economic one. There are additional costs that will be involved. They have been strapped for funds, and they are essentially trying to keep costs as tight as they possibly can, as low as they can.

Ms. Gigantes: I have the sense, though, that public sector employers are essentially dealing with the question of transfer payments as separate from this legislation, and I wonder why that is, because certainly public sector employees are not. They are coming to us and saying, "Deal with it in this legislation."

Mr. McDonald: I guess we are not privy to their counsel.

Mr. Epstein: Perhaps if we had been, they would not have arrived at the conclusion they arrived at and come and said the things they said to you.

Mr. Chairman: I have a question with respect to a presentation we had earlier today from the Toronto school board. At least in the grade school system, there would appear to be a more equitable pay situation among the staff than what I am hearing about at the university level. I wonder whether you have any observations on why there seems to be such a major gap between one level of learning and another.

For one reason or another, they do have effective comparisons in terms of pay and they have an equal pay situation, for all intents and purposes. I get the distinct impression from your comments—and I glanced at your newspaper, the special supplement, as well—that is not the case in universities. Is there a reason? Is it just a historic imbalance that has perpetuated itself or what?

Ms. Baines: I think it is a historic imbalance, which shows up in the male dominance of the universities. I do not think that male dominance is quite as obvious at the public school level. I am speculating when I say this.

Mr. McDonald: I believe the major source of the male-female differential is in starting salaries, and the reason for the differential in starting salaries turns mostly on the lesser availability of alternative occupations for females as compared with males. This means that women who are being hired literally cannot drive as hard a bargain.

Given the nature of the contracting that goes on after that, that differential tends to be preserved. It can also be preserved in the fact that once people are already ensconced in a career, it is not easy to move out. For example, if there are merit differentials that are applied at different levels to women as compared with men, then men have more alternatives to turn to if they want to leave and are able to push harder in the bargaining over such things.

Market forces are very critical right at the outset, and I think one of the things this legislation is designed to do is to make the market better, in effect, because it is trying to improve the opportunities for women. Also, and this is what bothers me about the COU involvement, there is a symbolic thing here. The universities do have a real responsibility to show leadership in ways that are seen by the rest of society. That is why it really disappoints me that people look for these kinds of small outs. I am disappointed.

Mr. Chairman: Have there been any studies done to develop some kind of a number, in terms of dollars, of what it would cost to bring about a more equitable pay situation in your institutions? Are there any pro forma budgets drafted or even a ball-park number as to what those costs might be? I ask that in the context of the difficulties universities have had with funding and the problems with budgeting, historically, over some long period of time.

Mr. McDonald: If the differential is truly in the order of 18 per cent and if the average faculty salary is in the order of \$50,000, then that means a differential in the order of \$9,000 per faculty member. Multiply it by the number of female faculty members and you get the total cost. I do not know that number offhand.

Mr. Epstein: It is more than I can scratch out in a second, but I will do it for you before I leave the room.

 $\underline{\text{Mr. Chairman:}}$  Since you have a background in economics, we will leave that to you.

Mr. McDonald: I do theory.

Mr. Chairman: Any other questions from members of the committee?

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Ms. Caplan: This is not really a question, but a comment. We have had employers come before us and suggest that the bill is offensive, as Tourism Ontario did, in the nature of implied guilt. I think you made a very good point, and I ask you to expand on that; that is, you are not talking about employer guilt, but market guilt. It is the market system which has discriminated, as opposed to the employer. I thought you stated that very well.

Mr. McDonald: In fact, if there were blackboards here and we had an unlimited amount of time, I would give you a lesson on differences in monopsony power, which can be used as a partial explanation.

Ms. Caplan: Can you define "monopsony"?

 $\underline{\text{Mr. McDonald:}}$  When a bargainer has considerable market power in the determination of wage rates.

Ms. Caplan: Your premise is that this is a problem within the market as it works; it discriminates, as opposed to an individual employer.

Mr. McDonald: I think you have to say it is both, but the legislation works to alleviate the problem in both places, because people in the market do not operate outside other things.

Ms. Caplan: We have had employers come forward and say, "We feel we are good employers; we want to be good employers." This legislation will just show them how or allow them to do that by adjusting the market.

 $\underline{\text{Mr. McDonald}}$ : Sometimes the market, because of what you have described as market guilt and I have described as differences in monopsony power, allows them to do just that.

Mr. Baetz: Have you seen that power diminish in the past two, three, or four years as women find more and more opportunities in research institutes, big business and so on?

Mr. McDonald: I have been in this game a long time, and I expect I was a feminist before most people in this room were feminists. I have been a feminist since I was about ten, because I was a twin. It was not because I had a female twin, but rather I thought the other students in my class who were girls were getting unfortunate treatment when they were in elementary school. Of course, all that changed when I went beyond that, but I was rather conscious of it.

I have been teaching this idea for quite a long time, and it is changing, unquestionably. The people with whom it is really changing are the students who are in university now. That is the group that is changing. But there was an awful lot of harm done in the past. Let us redress it; let us do it quickly.

 $\underline{\text{Mr. Epstein:}}$  I have the figure now for what it would cost to redress faculty centres.

 $\underline{\text{Mr. Chairman}}$ : I knew if we waited long enough, you would come up with one.

Mr. Epstein: It would cost \$4 million for faculty adjustments across the province as a whole. Of course, the universities are not exclusively faculty. Obviously, there is support staff as well, and I am afraid I cannot give you the details of what it would cost for the support staff. In terms of faculty and university librarians, \$4 million would be ample.

Mr. Chairman: That is helpful.

Mr. Baetz: Since nobody has given us a different figure, that is the one that stands.

Ms. Gigantes: All in one year.

Mr. Epstein: Yes.

Mr. Chairman: I would like to thank you on behalf of the committee for your presentation and for sharing your views on Bill 154. Thank you very much for coming before us.

Mr. McDonald: Thank you very much.

Mr. Chairman: Before we go to the Women's Perspective Advisory

Committee, I want to make one adjustment on your agenda. We have a three o'clock hearing; then please insert a 3:30 hearing, Industrial Welding Products with Bill Logan. It will be package 133 in terms of the written information. We have half-hour schedules following that from 3 p.m. on.

I would like to call the representatives of the advisory committee forward, if they are in the audience. Take a seat up at the front, please. When you are seated, if you would introduce your delegation to the members of the committee, we would appreciate it. As soon as you are settled in comfortably, you may begin your presentation to the committee.

Ms. Gigantes: Do we have a written brief?

Ms. Herdman: No. We do not have our written brief yet available. It will submitted to the committee at the end of this week or early next week.

# WOMEN'S PERSPECTIVE ADVISORY COMMITTEE

Ms. Herdman: I would like to introduce Nicolette Caccia, to my left. My name is Pat Herdman, and I am executive vice-chair of Women's Perspective Advisory Committee. Seated here is our invisible speaker, who is named Johanna TerWoort--Johanna TerWoort also represents part of our presentation, and I will get into that in a moment--and to my far right is Elizabeth Gomes.

We are all members of an advisory committee called Women's Perspective Advisory Committee, which was set up originally to present policy initiatives to the Liberal caucus and to encourage women to enter into the political process. We could not let policy initiatives just die on the table, and we have also taken that one step further, in that we actively lobby for legislative changes.

Our membership is made up of about 500 people to whom we send monthly mailings. Within that we have a broad spectrum of people, and not only within the Liberal Party. We also have people on our mailings who are Progressive Conservatives or who are New Democratic Party members, etc. We like to keep women informed and we like to get them involved in the political process. We do not like to keep people out of it by virtue of any sort of affiliation. Many more of our members have no affiliation whatsoever to any political party. As I said, our main focus is to get women involved, and that includes women in our community from the ages of 20 through 70 and perhaps beyond, but they have not admitted to their age.

We have small businesswomen. I represent small business. We also have educators, health professionals, students, lawyers and homemakers as part of our committee. While our executive is made up of card-carrying Liberals, as I have said, most of our members are not involved directly in political parties.

Our presentation today is going to take a slightly different approach from that of many of the presentations you have heard over the past two weeks. We have closely followed these presentations and know the committee itself is well informed of the statistics, the possible dollar figures and all the technical aspects of pay equity that are coming to the fore. What we would like to share with you today is our personal experience because we want to put a face on pay equity. We want to put a face on the inequitable way in which women's hard work often just does not pay.

The work that women do is undervalued; hence the need for this committee. For example, at the turn of the century when men were secretaries,

that job was well respected and well paid in light of the community. However, when women flooded the secretarial field the market value of that job dropped sharply.

I would like to mention the word "secretary" because that is how I started in my career. I am happy to say I managed to break out of that field and become more involved in technical writing and computers, but it was a long and hard road. It seemed that once I became a secretary I was branded and almost branded for life.

Women do not work for fun. Women work for money. A woman earns 36 per cent less than a man. When a woman pays her rent, the landlord does not deduct 36 per cent. When a woman buys groceries, the price is not decreased by 36 per cent. When a women buys diapers, children's clothes or medicine, that price is not reduced for her, but when she enters the job market she is expected to accept less.

Now I can sit back and say that I am a successful businesswoman and that my future looks rosy, but there was a time when my future and my present were not rosy. I graduated from high school at the age of 17. Having been a bright, energetic woman I left two grades early. I married at 18, which was my profound mistake because by the age of 19 I was a single mother and the prospects of earning a decent living wage were almost nil.

I had been working as a secretary since I was 16, and I went back into that field. However, with a baby to support, which is a very expensive dependant, my ability to support us was overburdened, so I went back into the university field. I took courses during the day while I did part-time work at night and somehow managed to make ends meet for two years, but I was stretched to the limit. I did not go to the government for funds; I did it on my own. I again returned to the full-time work force as a secretary.

By the age of 22 I was a secretarial supervisor in a large accounting firm, one of the Big Eight. I had reached the highest limit that a secretary could reach in that environment. My skills required good communication in terms of writing and excellent grammar and telephone manner. I had to type flawlessly, and I mean flawlessly. I had to compile and analyse statistics and reports and I had to supervise three women, all of whom were older than I.

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At the age of 22 I had reached the upper echelons of secretarial success. What was my career path? Was I to spend the next 43 years in the same job? My answer to that was no, and I took evening courses at the University of Toronto, which is where I met my first example of pay inequity in the job market. In this company I worked for, the professional staff had all their tuition reimbursed and had a two-week allotment during which they could take courses during the day. For two weeks out of the year, along with their three-to-five week vacations, they were allowed to pursue their education, whereas nonadministrative staff, which meant all secretaries, all women, did not have any of their education reimbursed.

The \$110 tuition that I paid to the University of Toronto at the time for my computer courses took a lot out of my finances. I saved for a long time for that \$110. As well, I paid for extra baby-sitting. I paid by not having winter coats and boots. I can not imagine how I survived without them before.

I managed to understand computers to the level where I could break into

the technical writing field, at which point I was hired by a large consulting firm as a professional. I was so thrilled I could not sleep for two nights. I had done the nearly impossible: I had broken out of the secretarial prison without a university degree. I had only had courses.

The thrill wore off quickly, because I discovered something ugly. I was earning just a little above the secretarial wage, although I now had my tuition reimbursed, but a young man without a degree who was my exact same age and with the same title I had was earning considerably more. I confronted my employer. Their excuse for the pay inequity was that he was studying for his RIA, which is registered industrial accountant, yet when the young man chose to drop his RIA program, his pay did not decrease, nor did mine increase. We had the same title, the same charge-out rate to our clients and the same responsibilities, but we did not share the same salary. My expenses were far greater than his; I supported a child.

I finally left the firm and started my own business. Now I have five people working for me, and we all write computer manuals and test computer systems. I am proud to say I did not forget those other sharp secretaries behind me. I have trained four women from the pink collar ghetto and taught them, maybe to their chagrin, how to write computer manuals, which is not necessarily the most exciting field but makes a lot of money.

The secretaries had developed all the skills required to go into the computer field during their course as administrative support staff. For example, they could type. They need to do that to write a manual. They had a strong command of the English language. They could communicate well with other people, because they had to learn about the programs and about the computer systems in place. They were dedicated people and they were bright.

All I did was give them a nudge, a little hope and a little direction. They did the rest because they were smart and capable, and they are now semiprofessionals. We have tax problems, and I am happy to say that.

We know pay equity will not solve all of our social problems but it is a place to start. The Women's Perspective Advisory Committee encourages the passing of Bill 154. Of course we expect to have wrinkles ironed out over time. Nothing is perfect, but we hope that as we discover these imperfections or better ways to accomplish the same task, we will be able to do that as time goes on.

But pay equity must become law soon. We have waited long enough. If I had pay equity in the past, I might have been able to address some of the inequities that I bumped into and barrelled over.

Pay equity is a powerful symbol to our society, a statement that the people of Ontario acknowledge (a) that pay discrepancies exist on the basis of sex, which is a big jump forward for us-we all know it happens but we do not acknowledge it formally-and (b) that these discrepancies are wholly unacceptable and now against the law. Pay equity announces to our young people that we value women's work. Pay equity is not only a tool to enforce and encourage equitable wages; it is also a symbol of fairness, and symbols shape the attitudes of our society.

That is the end of my personal experience. As I said, I have two focuses. One is as a secretary the other as a small businessperson. We have other focuses today. We have Nicolette Caccia, who will be presenting the view of our young people.

The invisible person to my right was to present the view of women who are young at heart but over 40 and who have had to re-enter the job market, perhaps after a long marriage, and suddenly, upon marriage breakdown, have to work two jobs to make ends meet. Johanna TerWoort asked if she could come and join us, but she is working two jobs, one in the evening and one during the day, and cannot spare the time, nor could she spare the cost of her hourly wage to come here today. So we will have Elizabeth Gomes speak for her briefly and provide a summary from the political perspective of pay equity. I hand it over now to Ms. Caccia.

Mr. Chairman: I just wanted to remind you that we-- I do not know how long the balance of your presentation is going to take, but if you want to leave any time for committee questions, we have about fifteen minutes. You have only half an hour for the presentation. I just want you to govern yourselves accordingly. I am not trying limit what you are about to say.

Ms. Herdman: No, we understand that and we have that organized.

Ms. Caccia: I guess I am going to say my part of the presentation rather rapidly.

I have come before you to address the issue of pay equity as it affects both young women and young men. I am a student at the University of Toronto, and although I have spent the majority of my life to date in educational institutions, I plan to spend the majority of the remainder of my life in paid employment. So this issue has a lot of relevance to my future, although, not quite a lot of relevance to what is happening to me now.

While the bill has a number of practical ramifications for the working world, it is important to remember that pay equity is also a symbol of societal and legislative acknowledgement of the equality between the sexes in terms of their contribution to the working world.

The perception of people as workers whose remuneration is dependent only on their skills and labour and not on whether their job is mainly held by men or by women, has an effect on the thinking of society.

The worth of the job and the person performing it in our society is closely tied to the remuneration it receives and vice versa, be it a good thing or a bad thing, but a lot people's self-worth and the worth they have in the eyes of others is very dependent on what they are paid. If you are being paid \$10,000 per year, you do not have a lot of things in life, but you also have a lot less respect from people than if you earn \$30,000 per year.

This is within a family or within relationships between people and in relationships with the outside world. I think this plays a very large part in the choice of a job when people plan a career.

I think people should not be monetarily penalized for entering a female-dominated field. The remuneration of a job should correspond solely to its value and not to the gender of the people performing it.

If someone wants to enter a field that is not particularly well paid, in terms of the skills of being a librarian or whatever else, they should be encouraged to enter that job if they are well suited to that and not have to say, "I really want to use my education in the job that is worth the most and I want to take another kind of job rather than being a good librarian."

The worth of the job is directly related to the value it brings to society, to the company or whatever else, not in terms of whether women are mainly doing it. If they need the money or they do not need the money, I do not think is really very relevant.

Pay equity also affects the relationships between the sexes. Often, a woman is expected to make career sacrifices when it comes to a conflict between the needs of her job and those of her partner. For example, if he is relocated to another city, he says: "I am making \$40,000 per year and you are making \$26,000 per year. It is more important for our family and such that I move and you try to find another job and you give up your job."

If they were making an equal amount of money, they would each have an equal amount of say in where they should go and whatever else. I think that is very important. On average, women are earning a considerable amount of money less than men are, and in their relationships this will often be used against them, but in a very positive way within the relationship, because men will say, "If I move and work, the family will be making \$40,000 and if we stay here, the family will be making \$26,000 and thus will suffer." So I think it is very important.

Also, within a number of other contexts other than the employment context, such as relationships between people, the quality of a relationship is very difficult to maintain if one partner's job is valued less than the other's in such a significant area as employment.

In addition, society invests a great deal of money and effort in the education of both males and females and has accepted that both sexes will be able to use their education to contribute to the fullest to society and to be paid a comparable wage for a job of comparable value.

Pay equity, by establishing this principle, opens up careers for children and the youth of today in which they will be valued solely on the skills and labour involved in their performance.

So far, I have spent the majority of my life in school and, upon leaving, I hope to be able to put my education to good use. I hope that whatever field I enter I will be able to earn a wage commensurate with my abilities, which is not based upon my sex or upon the choice of my career, which may be predicated on the kinds of things I would want to do as a female.

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The symbol of pay equity, with its basis in equality among people, is very important in influencing public perception. In interviews, I have been asked both indirectly and directly how my private life, such as my desire for marriage and to have children, will affect my career, with the implication that these choices make me a less desirable prospect. Upon questioning, people have said that maybe my career would be influenced by the path my husband's career would take and the demands family life would put upon me. These examples of how people viewed the careers of males and females differently, with little connection to the abilities I could bring to the job, made me realize they were assuming my job would be of less value than that of a male.

Pay equity is based on the principle that all people deserve to be remunerated on the basis of the value of their work, and I feel it is important in the eradication of the attitudes which I encountered.

Aside from the symbolic aspects of pay equity, the issue also has a number of practical considerations which affect our youth. Women do not work for frivolous reasons; the majority of them work to support their families. Many women are single mothers who support their children on their incomes. If she is not paid an equitable wage, it is often the children who suffer. If an equitable wage would be paid for certain jobs, it would be financially feasible for a number of single mothers, who by certain examples of inequity are on welfare, to get these kinds of jobs and remove themselves and their families from the welfare rolls, thus relieving the social services burden.

Equitable remuneration for jobs also affects the children of working parents, financially and in the shaping of their attitudes towards both the roles men and women play in society and their relative worth and the planning of their future. Young people of today would then be able to pick a career on the basis of their talents and inclinations without the fear of penalization for choosing a female-dominated career.

A very facile answer to pay inequity is that more women should enter male-dominated fields and be encouraged in this way. While this is possible, it does not address the central issue of whether a job should be valued solely on skills and labour and not on the gender of those performing it. This principle is fundamental to human equality, and we feel this bill, while not a perfect solution to the problem, is a large step in the right direction. The principle of pay equity, in both practical and symbolic terms, is important to Ontario and its movement as a just and equitable society.

Ms. Gomes: A little bit of my background is that I have been a single, working mother. I went back to school and took a masters degree. I paid to the tune of \$4,000, working at the same time. I started my own management consulting business six years ago and have encountered a number of problems when installing performance appraisal systems, etc. I have a lot of empathy for small businesses when they refer to personnel restructuring and changing the organization dynamics around. Today though, I would just like to give a simple address on the social change of the bill and an endorsement of the bill from a social aspect.

Women are exercising more responsibility for shaping society socially and economically and, in the process, are assuming greater responsibility for decisions affecting the public interest. To deny women this legislation, Bill 154, a symbol of financial equality, is folly. It denies women taking those greater responsibilities in this society.

Social change has been happening in the economy with respect to the breaking down of segregated sex roles. This has provided greater opportunity for women to move outside or to cross over from the traditional functional role of mother and wife into more financially shared social and economic spheres with men. This social change addresses a shift in the boundaries between work and family life and between private and public responsibility, women being members of both.

We cannot afford not to have this legislation. Social change has brought shocking realities. Fact 1: The majority of married women entering the labour force have to do so to bring their family income above the poverty level. Fact 2: The majority of working women are single, divorced, widowed or separated. They have to work to support their dependants. Fact 3: The majority of women in the labour force are in the lowest-paying jobs. Therefore why should it be expected and tolerated that women should receive less compensation for their participation in the work place? If most women are in the lowest-paying jobs.

they can hardly be expected to supplement bad systems financially. This does not say that the educational system is bad, but that women must be recognized as needing to be financially capable to perform their roles and carry the load as effectively as possible.

It also speaks to the caring for qualitative development for future generations of people. It only stands to reason that equal compensation for work of equal value will allow women to participate in economic independence in what might otherwise be a total welfare state with women constantly needing handouts from the government.

Pay equity legislation is a crucial component of power and control over one's own life. The functional sex roles played by women have been determined by the public interest of the day. In the post-war period, women were required to stay at home and be homemakers for husbands and children, but by doing so, they were removed from the major decision arena of the labour force.

Another social revolution has been the birth control pill. Marshall McLuhan said that the pill will cause traditions to fall and sex roles to change. How true. Men who were once the sole breadwinners and impregnators have been subjected to new attitudes and behaviour by women. Women's new freedom gave them strength and power of direction. Women's decision-making about their own destinies increased. The threat of uncertain pregnancy no longer hangs over a woman's head and her child-bearing capacity should not be held against her. Women began to take a valuable and real place in this economy. They began to cross over from the private to the public realm.

In a society where money determines value, those who work outside the money economy are not considered as doing real work. Therefore, we submit that women are doing real work and deserve a real and equal wage. Pay equity should be a reflection of this transition and social change. Legislation such as Bill 154 is essential to the securing of women's further participation in the work force.

One might argue that politicians should be allowed to speak on many issues, from minority rights to economic policies. Let us get something straight. Women are not a minority group, yet one wonders about their status and their legal legislative representation which almost make them seem as if they are a minority group. Women's monetary compensation is exactly a reflection of that political attitude. Therefore, men must be convinced that their interests do not need to suffer when women move into the labour force and become economically independent. An economic value system must be instituted that more closely resembles a restructuring of sex role functions. Bill 154 is but one small step towards that restructuring.

Women have been expected to do things for love and duty. Everyone was entitled to their help, but productive behaviour is based less and less on love and duty and more on contractual agreements. Collective agreements, not love and duty, are the basis for paid work. By moving into the labour force and entering into contractual agreements with employers, women are taking their place alongside men in the real and valued economy. Also, women and men are entering into more contractual personal living arrangements, with women becoming more conscious of assets and liabilities and their rights under the law and men becoming more conscious of raising their children.

Political relevance: What is it? In a work world that has become more aware and sensitive to so-called human rights, it is becoming acknowledged, though slowly, that women's role in the work force is as diversified as that

of men. This diversification must be recognized by management and unions in all areas, including career patterns, pension plans, salary scales, fringe benefits, work styles, etc.

Though much of this recognition can be negotiated and ratified outside the courts, the fact still remains that the laws of this land have a direct bearing on the work force and arbitration will be needed. This bill is a piece of legislation that endorses the general principle of equal pay for work of equal value and should be passed with this in mind. However, we recognize that review, re-evaluation and education of the Pay Equity Commission is necessary for it to be effective. There needs to be flexibility and ongoing research on the part of the commission so that it can respond to the changing economic and social environment.

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This legislation should not be misinterpreted as the government telling business how to do business or how to set up performance appraisal systems. It is to ensure that long-standing inequities are corrected by use of the law. If business is saying it can carry on business only on the backs of low-paid females--not low-paid workers in general--then I suggest to you that blatant sexism exists in this province and this country.

The legislation is an encouragement to employers to determine job criteria on skill, effort and responsibility, not on gender and/or sex, however it comes. For small businesses, a variety of job comparison techniques are available. They are simple and inexpensive and do not require outside consultants.

I just wonder how history will view the time frame of this legislation: How, in a star wars age, a microcomputer age, women in a so-called modern age were standing before the law of the land discussing equal pennies for work of equal value with their male counterparts.

It has been a little over a hundred years since women were not even considered persons under the British North America Act. Women were ruled by law to be persons only in matters of pain and penalties and were not persons in matters of rights and privileges. Only in 1929 were women able to become persons under the act, and hence, could be appointed to the Senate. And here we stand, 60 years later, before the law of the land, justifying the worth of our participation in the social and economic state of this land. I suggest that pain and penalties still prevail, and it is women's right, not even a privilege, that this legislation be passed.

I would now like to introduce Johanna Ter Woort who cannot be here. She sends this by air mail, profile of the invisible woman on the--

The Acting Chairman (Mr. Lupusella): Excuse me. Would you please sit down? We cannot record your voice.

Ms. Gomes: A middle-aged, possibly immigrant person; victim of marriage breakdown; marriage was likely a lengthy one; likely put husband through university or else promoted his small business or career; raised happy, healthy future generation; volunteered at hospitals; major funding, home and school; upgraded and maintained the modest, at that time, home; Working and unable to attend meetings of this nature; working at wages that

prevent her from buying his interest in the matrimonial home; buying legal help.

Her options: Male type of employment--janitor, parking lot attendant--jobs paying at least \$10,000 more than her woman's job; caring for emotionally deprived and rejected children whose cost to society, by the way, is \$100 per diem. She can vote, and that she will, for pay equity, and the sooner the government acts the better.

She is, above all else, going it alone. She does not want alimony, boy friends or handouts. Paychecks should not victimize her into yet another dependency.

She could be a zoo-keeper at \$22,000 and take care of animals or be a day care worker at \$13,000 and take care of kids. Maybe we can retrain her to be a zoo-keeper for \$22,000 and redesignate children as animals and her the paid worker zoo-keeper to take care of them.

Thank you very much for your time.

The Acting Chairman: I would like to thank the delegation for a very interesting presentation. I would like to remind members of the committee the half-hour has already expired. I am sure there are some questions that will be raised with the delegation. Again, I hope you will restrain your preambles.

Ms. Gigantes: Thank you for your presentation. I am sorry I missed the names at the beginning.

Ms. Herdman: My name is Pat Herdman.

Ms. Gigantes: Pat, at the beginning you talked about your own experience. The case you described to us is one a lot of us have heard many times over. It was really a case under existing legislation. It was a case where you were doing the same work as your colleague and were not getting the same pay.

Ms. Herdman: That is right. I was not aware of it being under existing legislation at the time, but even then there were very easy ways for my employers to make excuses. Their excuse had been that he was in an RIA program and was improving his education and that was directly related, and therefore, it was different. At the time, I accepted it as that. If pay equity was a symbol out there saying, "No, that is not right," I would have been able to take redress, but I did not understand that part of the legislation at that time. It was more submerged legislation of which I was not aware.

Ms. Giagantes: One of the problems we have had with equal pay for equal work has been enforcement. You talked about an exemption that was legitimate for the employer, or he could legitimately have tried to claim, in any case. Some of the concerns I and my party have about the bill are precisely the kinds of exemptions that we see built in.

I understand from the little leaflet called Women's Perspective that has come from your committee that your committee had been involved in consultations with other community-based groups about the way the legislation should be amended to make sure it is strong enough to be effective, and that you addressed the timing of the legislation, the time frame for implementation, the question of covering all-female work places and making sure there was a built-in legal mechanism for dealing with those and the

question of having full coverage of all female workers, at least through a complaints system.

Ms. Herdman: Our primary liaison for that aspect of this is a woman named Gloria Pollock who also could not be here this evening. She was involved in 6 a.m. breakfast meetings discussing the different issues with us. She is working today so she could not attend, but she has been involved in liaison. Yes, we recognize there are some areas where we would like to see improvement, but if we stall this, we could just keep stalling it until it does not get in, and my children will be adults before us saying, "Let us talk about pay equity." I would like to see it happen soon.

Ms. Gigantes: There may be two ways of looking at continued discussion. One may be an attempt to stall, and we have certainly had that proposed to us by employers coming before us. The other is still a question of whether we are passing effective legislation that can be useful to women in Ontario or whether we are going to pass legislation that will effectively mean that hundreds of thousands of women, and perhaps women who are in the most vulnerable work situations, are not going to have support through this legislation.

Ms. Herdman: I write computer manuals for a living and I would like to make an analogy here. When I put a computer manual in there is always a typo--I cannot get away from that--and systems change. The system I just wrote about has changed by the time implementation has occurred. My response to the clients is: "This is a computer manual. It is going to train your 40 people here, okay. These two pages are wrong. We will fix it. We will put it out there, get it there, get it going, get it started, get people aware of it, get advertising going with it here"--so people like me at the age of 22 would have known that I could have done something--"get that out there, and we will fix it up as we go along."

 $\underline{\text{Ms. Gigantes:}}$  But you would not propose a manual that covered only half the employees.

Ms. Herdman: I would propose a manual that covered half better than zero. I sometimes put manuals out there that are half-written because at least people know the most important half that is going on or what is happening in their jobs. At least they have something, which is a lot more than nothing. I do that.

Ms. Gigantes: I will not do that with this legislation.

 $\underline{\text{Ms. Herdman:}}$  I appreciate that, but that is what I do. At least it gets something done.

Ms. Gigantes: Thank you.

The Acting Chairman: Thank you for the questions. I trust, members of the committee, if there is any other question that should be raised--if not, I would like to complete my final statement.

 $\underline{\text{Mr. Baetz}}\colon \text{I would like to thank them personally for this presentation. It was very different; slices of reality.}$ 

Ms. Herdman: Thank you.

The Acting Chairman: I would like to thank the delegation on behalf

of the committee for appearing before this committee and making valuable comments about the content of the legislation. Whatever you said will be taken into consideration when this committee gets involved in the clause-by-clause deliberation of the bill.

As I understand it, there is another delegation to appear before this committee. It is Industrial Welding Products. Bill Logan is the president of that company. Maybe they can take their their seats. Mr. Logan, do you have somebody else with you, or are you the only one making the presentation before the committee?

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#### INDUSTRIAL WELDING PRODUCTS CO.

Mr. Logan: I am very sorry, but there is only one of me. I am going to have to stand this test all by myself.

You should have before you a brief I have prepared. I would like to go through this brief as quickly as I can and allow whatever questions this committee may want to ask.

I am honoured to have an opportunity to place my views before the standing committee. My name is Bill Logan. I am a resident of Oakville. I am the owner of a business. I employ 22 men and women in my company, Industrial Welding Products. It is located in Hamilton and we have branches in Oakville and St. Catharines. I want to be clear about my company policy. We believe in the rights of women and men to equal employment opportunity, as well as freedom from gender discrimination in the work place. We do not feel we are unique in taking this posture.

The viewpoints contained herein will support the opinion that Bill 154, in its present form, is not needed because it poses ominous consequences to the women, the taxpayers and the small businesses of the province. Recommendations are submitted for achieving the same objective as gender pay equity.

Before going on, I would like to discuss a little bit more about my company. We have men and women in my company, and those men and women are paid by me. I am the one who sets the pay rates and I have done my very best to make sure those rates are fair. I have made sure that a person is valued because of that person's contribution to the company, not because of sex.

I am a small businessman, but I do not think I am different from many other small businessmen who value their employees. I am in a service industry. The success of a service industry is in terms of its people, and if you discriminate against one person or another person because of sex, you are ruining the long-term success of your service organization.

Impartiality of compensation and gender discrimination, in my opinion, are the two components of Bill 154. If I am not mistaken, each of these respective areas is covered under present legislation enacted through the Employment Standards Act and the Ontario Human Rights Act. I am not a lawyer; I am businessman. As a matter of fact, I am a welder from the east end of Hamilton, but I know the Employment Standards Act covers this. I know that section 33 of the Employment Standards Act says that no employer shall discriminate between male and female employees by paying the latter less than

the former "for substantially the same kind of work performed in the same establishment." That is only common sense.

The same thing applies to the Human Rights Code. We will not discriminate because of sex, and it says so clearly. If I am not mistaken, I believe there is a Canadian Human Rights Code that says the same thing.

If these apprpropriate and adequate laws already govern this issue, why do we need Bill 154? Why do the elected politicians want to undo legislation that has stood the test of time? They want to replace this legislation, which we have well established, with unproved, flawed and confusing legislation. Not only is it unproved and flawed, but also it has not been tried anywhere else in the world. I want to know why politicians want to spend hundreds of millions of dollars on a completely new government bureaucracy which, in essence, will be doing the work now done by the Ministry of Labour.

I found it interesting that Derek Nelson, a journalist, wrote in the Brampton Daily Times on September 17, 1986, "Pay equity is the scheme whereby government will force private sector employers to pay men and women the same wage for different jobs." If that is the case, then it is clear to this businessman who stands before you--or sits, as the case may be--that the concern is not pay equity or gender discrimination but creeping socialism, wherein everyone is paid the exactly the same wage. That is interesting.

I think that poses ominous consequences to women. Bill 154 is a form of wage control. Its intent is to impose government controls on the private sector with respect to the amount paid to women for dissimilar work done by men. It does not take into account merit or skills availability. To a certain extent, it does, but you must prove it in an unspecified way. It does not take a company's financial health into consideration. Its execution is proposed through a new bureaucracy which will allow government inspectors to determine the value of jobs as opposed to those who are most familiar with it, the employer and the employee.

This province has already seen in rent controls the effects of government-imposed price controls in the private sector, and the consequences of that action were pretty drastic. The private sector responded to government controls in a free society. It stopped building rental apartment units. The very law that was supposed to help economically disadvantaged people in their quest for affordable housing has turned into a disincentive for the construction of new rental units.

Bill 154 has the potential of ensuring the same consequence with respect of the availability of jobs for women. If the wage control measures contained in Bill 154 have the potential of decreasing employment opportunities for women in the future, as evidenced by this parallel legislation in other areas, why will the legislative proponents of Bill 154 not offer amendments to the existing legislation, which has proved successful in diminishing gender pay equity discrimination? Is it possible that the proponents of this bill are willing to gamble on this issue, on something unknown? If that is the case, are these political proponents of Bill 154 pursuing substantive matters or political issues?

Bill 154 identifies male and female job classes as 70 per cent and 60 per cent respectively. This is going to cause some employers to question whether they should be hiring more women. The bill does contain some reference to historical data, but we cannot avoid the fact that some people are going to react negatively. In addition, an employer might be hesitant to pay a woman

more than a man, because of Bill 154. In this instance, Bill 154 would establish a ceiling for a woman's worth, based on a man's pay. This is not the right way to do things. These are a few situations in which women could suffer negative consequences because of the government's interference in the private sector. I am sure there are many more examples.

My opinion with respect to the consequences to women is that the proponents of Bill 154 have identified issues that are not new; they have been around for a long time. The proposed changes appear to be for the sake of change alone, with little regard—and this is the point—for the long-term effect upon women. The fact is that there is very little legislators can do to assist women to impose laws upon the private sector. There has to be a societal change here, and that societal change is taking place now. Women's advances are through education. This is a political quick fix, and it will not work.

In order to have meaningful impact on this matter, government should propose programs that will educate women as to the available job opportunities and the skills required to obtain them, that will provide women with skills training or retraining in the pink-and-non-pink-collar fields and that will allow for nonprofit as well as private sector child care that is affordable to economically disadvantaged families. That is the right way to go about it.

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There are some ominous consequences for the Ontario provincial taxpayer. This bill includes the creation of a Pay Equity Commission that is a completely new bureaucracy. You will forgive me, but this taxpayer who sits in front of you understands that to mean new offices, chairs, desks, tables, computers, word processors, forms, stationery supplies, vehicles, etc., in every municipal and provincial constituency of note.

As well, these offices will have to be staffed with new people who will have to be trained. If experienced people are hired, there is a strong probability that they will have been recruited from the Ministry of Labour, and, of course, the taxpayer will pay for it. The provincial government will be able to afford this immeasurable cost by raising taxes. It is suggested that just the public sector cost will be in excess of \$100 million. What will the total cost be? Will it be \$500 million, \$1 billion, \$2 billion?

The estimated cost to the employer who will require a consultant to develop a job description is said to be \$300 to \$500. The taxpayer-consumer is going to pay for it, because the cost will be passed on to him in one way or another. Why does this province require a new bureaucracy? Why do the political proponents of this bill wish to discriminate against the Ministry of Labour which already exists and is fully staffed and has all the pencils, desks, tables, etc., that it needs?

I submit to you that this portion of Bill 154 is not fiscally responsible. The politician proponents of this bill would spend hundreds of millions of dollars on infrastructure that already exists. This is spending taxpayers' money for the sake of spending money. How will society benefit from this?

Again, I refer to substantive matters that do not appear to be the issue here. The establishment of a redundant bureaucracy appears to be more of a political move than a substantive move. Along with my recommendation that gender pay equity legislation be addressed through the Ontario Human Rights

Code as well as the Employment Standards Act, I strongly recommend that the Ministry of Labour continue to be responsible for this portfolio.

There are ominous consequences for the small businesses of the province as well. This is an administrative disaster for the small businessman. The issue is guilty until proven innocent. The employer must prove that male job categories and female job categories are or are not of equal value based on four criteria which do not include individual merit, employee productivity, availability of labour or other meaningful criteria.

Everyone does everything in a small business. Let me tell you about the man who sits before you. I own the company but I mop the floors. Sometimes I roll cylinders and sometimes I speak before legislative committees. Let me tell you about my operations manager. Sometimes he is the operations manager, sometimes he goes into the warehouse and loads trucks, sometimes he drives the trucks. Let me tell you about my receivables person. Sometimes she counts inventory, sometimes she goes to the order desk, sometimes she answers the telephone and takes orders. We do everything in a small business.

I do not have a personnel department in my company, and there are very few small companies that can afford personnel departments. The cost of generating a job description, which is constantly fluctuating, has been estimated at between \$300 and \$500. That could represent as much as \$10,000 for a company of 20 employees. But if a complaint is lodged against that company, whether it is frivolous or not frivolous, whether it is anonymous or not anonymous, it is going to cost the company as much as \$100,000. That is going to drive the company out of business, and there will be no more jobs for men or women at that company.

Another real possibility in this proposed pay equity legislation is that the pay inspector from the new pay bureaucracy will come in and establish a wage that will affect a bargaining unit. It will raise the wage of the bargaining unit to the wage of a nonbargaining group. If that is the case, we do not really need unions any more. There are going to be a lot of embarrassed unions.

I think this bill is very flawed. If it is going to be put forward, I submit that you increase the small business exemption from 10 to 200 employees. That is what the green paper suggests small business is to be.

In my opinion, gender pay equity is a noble goal. I think all people, regardless of whether they are men, women, executives or warehousemen, should make a living wage, but I do not believe what we are saying here, that everybody should receive the same wage. Gender pay equity suggests that men and women should receive the same wage, regardless of their qualifications and the jobs they do. This has me very concerned.

Bill 154 oversteps the bounds of good legislation in that it injects government control into my company. It does not allow me to make decisions any more. It tells me what I must do. For this reason, and all the rest I have mentioned, I think this bill is very deeply flawed.

More to the point, it will not make a meaningful difference in the quest to attain gender pay equity. What it will do is create an atmosphere of confusion and mistrust. That is because of the inescapable and heavy-handed manner in which the government will impose its will on the private sector.

This bill should be radically amended so as to be able to improve

existing laws ensconced in the Employment Standards Act and the Human Rights Code and implemented through the Ministry of Labour. That is my brief.

Ms. Gigantes: Mr. Logan, I would like to thank you for your presentation. It had a flair and a style that many other presentations by employers lacked, if I may put it to you that way. I appreciated the way you expressed yourself. It was very direct.

Because you are obviously a person who can give expression to his thoughts on a subject quite clearly, I wonder how much of a task you might think it to sit down and write for yourself 22 position descriptions for the people who are in your employ? Do you think you might be able to do that over the course of a year?

Mr. Logan: Considering the impact a job description has in this day and age with respect to the Employment Standards Act, the Human Rights Code and a bargaining unit's influence on my company, I would consider myself ill equipped to write a legally adequate and appropriate job description that would satisfy the requirements of the government.

Ms. Gigantes: Do you have a collective agreement in your firm?

Mr. Logan: Indeed, I do.

Ms. Gigantes: For how many of the employees?

Mr. Logan: For seven of the employees.

Ms. Gigantes: For seven of 22. Do you think if you called upon the assistance of your collective bargaining unit and your employees that over the course of a year you could come to an understanding of the descriptions of their positions and an evaluation of those positions in terms of skill, effort, responsibility and working conditions?

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Mr. Logan: I think that has already been done to a certain extent. Unfortunately, because we are such a small company, that job description is extremely broad. That has been negotiated between management and the bargaining unit, and I might suggest that in our company we have an exemplary relationship between bargaining unit and management.

Ms. Gigantes: Then you think you might be able to undertake that and work it out satisfactorily.

Mr. Logan: No. I am saying I cannot do that to the satisfaction of the Ontario provincial government. I would not for a moment undertake that task. With respect to the job descriptions of the bargaining unit, they have been undertaken through legal counsel, who advised on the proper, adequate descriptions.

Ms. Gigantes: So you have job descriptions for seven of 22 employees.

Mr. Logan: Yes, that were paid for. They are commensurate with that \$500 per employee.

Ms. Gigantes: And you do not feel you could sit down, given the existence of job descriptions for almost one third of your work force, and

create job descriptions that would allow comparability on skill, effort, responsibility and working conditions?

Mr. Logan: Ms. Gigantes, again I must say to you that I am but a poor welder, a simple welder from the east end of Hamilton.

Ms. Gigantes: You are a pretty articulate fellow.

Mr. Logan: Thank you very much for that. I am a welder who has come a long way. I am not a lawyer and I do not propose to be a solicitor. I am not a politician; I do not propose to be that either. I know I must be very careful in my company, because I have a social responsibility to my people and I must make sure that what I set down on paper is correct.

Ms. Gigantes: It has to be correct even if it is not set down on paper, surely.

Mr. Logan: For that reason, we employ legal counsel who helps us negotiate those difficult turns of phrase in our legislation, which I do not understand.

Ms. Gigantes: Oh, go on.

 $\underline{\text{Mr. Logan}}$ : Thank you very much for having that much confidence in me, but I do not.

Ms. Gigantes: Thank you very much.

Mr. Logan: You are most welcome.

Mr. Baetz: I want to thank you too for your presentation. Like my committee colleagues here, I was very much impressed with the presentation and the way you were able to express your views in a very forthright and articulate manner.

There is one part of your comments I would like to have some clarification on. I think you made the comment two or three times that this legislation would force you to pay equal wages right across the board--almost the same wages. Is that what you were saying? That certainly is not the intent of the legislation.

 $\underline{\text{Mr. Logan}}$ : No, I view gender pay equity as paying the same amount of money to male and female job categories, just because they are male and female. That is gender pay equity. We can compare jobs of equal value, and there is legislation in place now.

If I might make reference to an earlier brief I was privy to, a lady mentioned that her pay for substantially the same type of job as a male peer was far less. I think that is terrible and I would not allow that in my company. That lady said it made her feel angry. I would be angry too if I were in her shoes. Nevertheless, legislation exists and has existed since 1951, I believe, that allows for men and women doing substantially the same job to get paid substantially the same amount of money. So I go along with that. What I hear from this pay equity is that it does not make any difference if you do the same job or if you do not do the same job.

Mr. Baetz: The word is "value;" a job that has equal value to you as the employer, as another job.

Mr. Logan: Equal value is a very difficult type of thing to establish. I am chagrined. I really am chagrined by the word "value." I am going to give you an example of what exists in my company.

I have three locations, one in St. Catharines, one in Oakville and one in Hamilton. My three locations all have a bargaining unit. That is great. The guys are great. We get along, we arbitrate, we conciliate, we discuss, we banter back and forth, and we get along great. But when this all started out, we had problems over job description. I said something was a management function. The guy said: "Well, come on now. That is not a management function." I said, "Well, let us have somebody arbitrate it." So the Ministry of Labour did arbitrate it.

I have three order desk positions. They do exactly the same amount of work. They do exactly the same quality work. They do exactly the same value of work. Two of them are nonmanagement and one is management, as stated by the Ministry of Labour. I know the value is the same. My fellows know that the value is the same. The Ministry of Labour does not know that. I do not know how to come to grips with this value.

Mr. Baetz: So you are saying that for the same jobs in three different locations, you are actually paying something quite different; are you?

Mr. Logan: No. I pay them exactly the same amount of money.

Mr. Baetz: You are paying them the same. In two they are called management and at another place they are called—

'Mr. Logan: Yes, I pay them the same amount of money. I am a small businessman and I am a service organization. I am not going to cause disruption in my place. I do not differentiate because somebody wants to consider himself management and another does not want to. The job has to be done and it had better be done. If it is not done, I will find somebody who can do the job, but in the meantime, it is the same job. Why am I going to pay somebody more or less for doing the same job? They get paid the same.

My point is that the Ministry of Labour, which did value this job--it spent a lot of money on this and sent a lot of people up--judged one of them to be management and two of them to be nonmanagement. They all do the same job and they get paid the same wages. I find it interesting.

Mr. Baetz: You have made a good point.

Mr. Chairman: Mr. Logan, thank you very much for appearing before us and sharing your views on Bill 154. I am sure we are sympathetic to many of the problems that you have identified. We will look at those very carefully as we get into amendments and changes on Bill 154. I cannot guarantee you that they will happen, but we can tell you that we have listened carefully to what you have had to say, sir.

Mr. Logan: Mr. Chairman, you have been very kind. I have been treated very well here and it looks like I am going to escape alive.

Mr. Chairman: Most people who come before this committee do.

Ms. Caplan, you wanted to make a couple of brief comments before Mr. Logan went. It will not require a response from you, Mr. Logan, but if you

would like to make yourself comfortable, Ms. Caplan feels that she would--

 $\underline{\text{Mr. Logan}}$ : I will be more than happy to come back up to the microphone.

Ms. Caplan: First, in listening to your brief, I think there are some fundamental issues within this legislation that you have some misconceptions about as to what it is we are trying to accomplish. I think you are an example of someone who is--we have had other employers come before us saying, "I am a good employer."

With the example you gave us about you recognizing the equal value within your own establishment and within your own business, it would seem to me that this legislation would not have an onerous effect on you at all. By the time that it would affect you, because of the phasing, the Pay Equity Commission would be able to assist you if you had some difficulties with saying, "What is it that I have to do to comply with this legislation?" Because of the mandate that it is given in this legislation to provide you with that information, you would not find this at all difficult to implement, given the type of employer that you obviously are.

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I think that Mr. Baetz addressed the question of paying everyone the same regardless of what job they do. That is not what this legislation is all about. It just says that an employer who considers himself or herself to be a good employer wants to have pay practices that do not discriminate strictly on the basis of gender, and that it is the value of the job, not the sex of the person doing the job, that is the issue.

From everything you have said before the committee, I think that you fundamentally believe in that principle, and I would suggest you do not have anything to fear. That is really all I wanted to say.

Mr. Chairman: If you are going to respond, could you keep it relatively brief. I wanted to give Ms. Caplan an opportunity to say that.

Mr. Logan: Thank you very much, and I will be as brief as I possibly can. Ms. Caplan, thank you very much for your confidence in my company and in my practices.

No, I have not missed the point. The point is, government involvement in business is not needed to the extent of Bill 154. We do not need a bureaucracy that is going to cost the province billions of dollars. If we really want to help women, let us take at least \$1 billion and put that into education. Let us provide the societal change. It is not government telling me what to do or telling my next-door neighbour what to do that is going to make a difference for women. It is not going to make a substantive difference at all.

If women have been discriminated against in the past it is because of societal attitudes, and no matter what type of legislation you put in, if the societal attitudes persist there will be ways of thwarting the law.

Ms. Gigantes: That is why it has to be tough.

Mr. Logan: So, instead of putting that law in, let us upgrade the present laws that we have. Let us assign more moneys to the teaching of women for jobs that are not pink-collar jobs. I might add that if we look at law

schools now, we have 50 per cent women there. If we look at business schools, we have 50 per cent women there. Let us get women down to the millwright stage. You might think you need a burly millwright. You do not. Women have as many brains as men do, and you can do the job just as easily with brains. Let us get women down to that end. Let us get them down to lathe operators and truck drivers. Let us open up new jobs for them. Let us not keep them in the pink-collar area. That is the way we are going to make a change for women.

 $\underline{\text{Mr. Chairman}}$ : With apologies, I am going to have to ask that we bring this to a conclusion. Thank you again for your interesting views. We appreciate your taking the time to come before us.

The next person I would like to call forward is Gordon Massie, Ontario leader of the Communist Party of Canada. Mr. Massie, please come forward now, and if you have others in your delegation, you can bring them forward as well.

## COMMUNIST PARTY OF CANADA (ONTARIO)

Mr. Massie: Mr. Chairman and members of the committee, I would like to introduce you to the secretary of the women's commission of our Ontario committee, Kerry McCuaig, and to read shortly from the briefs that were presented before you, after which we would be prepared to answer any questions that you may have.

The Communist Party of Canada appreciates the opportunity to appear once again before this committee to express its views on proposed equal pay legislation.

As this committee has no doubt noticed, the response to Bill 154 has not been greeted with much enthusiasm from either side in the equal pay struggle. Driven by its desire to maximize profits, the business sector will object to any state interference in the work place, no matter how weak and ineffective. A cursory look at the history of legislation won by working people, from the elimination of child labour to the minimum wage, the regulation of working hours, health and safety protection, maternity leave provisions, etc., will find capital in fierce opposition to these reforms.

This committee would be mistaken if it proceeds to make further concessions to the corporate sector around equal pay legislation in an attempt to win its approval. That approval will not be forthcoming.

The government must also assume a great deal of responsibility for any backlash against the proposed act. If the Premier (Mr. Peterson) had acted promptly to implement effective equal pay for equal value laws, as he promised repeatedly while in opposition and during the last election campaign, we would not be subjected to the current distortion of facts being publicized by such organizations as the National Citizens' Coalition.

It was the unnecessary delay in acting on this matter that invited groups such as the NCC to undertake this hate compaign against working women. It would be a welcome sign to Ontario women if this committee publicly disassociated itself from the NCC's statements and campaigns.

This does not mean that Bill 154 is satisfactory. From the women's and labour movement's side, there is much to criticize. The legislation contains many problematic aspects which could seriously challenge union practices and may even prove to be a divisive force for those in the union movement and between the organized and the unorganized.

As with Bill 105, we find it difficult to find any similarity between equal pay for equal value and what is contained in Bill 154. The process outlined in the act involves no redistribution of wealth from capital to working people. It does not return to working women the estimated \$7 billion that has been robbed from them annually through discrimination.

In Bill 154 we are looking at a share-the-poverty scheme. Where is the new money for women workers? What we have been offered is the same wage pie with some minor adjustments in dividing it up. This is an invitation to business to red-circle men's wages while women catch up, contrary to all internationally agreed guidelines covering equal pay for work of equal value. These state that no worker is to have wages cut or held back while others gain equal pay.

As stated in our past submissions, the Communist Party remains committed to one bill for both the public and private sectors. There can be no justification for segregating the work place. There is no justification for one group of workers having more rights and protections than another group of workers.

General recommendations: The preamble to the act must contain a strong statement of purpose, recognizing existing discrimination against women and outlining the fundamental importance of equal pay for work of equal value as a basic right for women of Ontario.

We recognize that taking such a step would make Ontario a leader in North America in implementing equal pay for equal value legislation in both the public and private sectors. This province considers itself a leader in many areas. Taking this step would acknowledge the good faith women have placed in the promises made to them by this government and would signal that this province does not approve of one sector of the population profiting from the super-exploitation of another sector.

There should be a single act providing both a complaint-based and proactive approach to the implementation of equal pay for work of equal value, without time limits.

Effective legislation would demand both a substantial increase in wages for women in the private sector and increased corporate taxation to allow the government to meet the wage needs of the public sector workers.

A separate fund must be established under the act to ensure that pay equity payments are not simply a transfer of funds intended for general wage increases.

Equal pay is not an economic cure-all but must be accompanied by other support systems to lessen women's vulnerable position in the work place, including child care, substantial increases to the minimum wage, affirmative action, job training programs and laws both to strengthen the power of the trade union movement and to facilitate the organizing of the unorganized. To show its good faith in helping to achieve equality, government should outline an immediate plan of action on these matters also.

#### 1620

Coverage: We are concerned with the number of workers who will not have access to equal pay protection as outlined in the act. Exclusions coincide with the most notorious female job ghettos. The cutoff of 10 workers excludes

over 12 per cent of the female labour force, including day care teachers, librarians and clerical workers.

It is workers in small business who are most in need of legislative protection. Two thirds of women in industry are found in the garment, textile, leather, shoe and toy sector. These are often immigrant women and women of colour, the most exploited sector of the working class, who labour for long hours, at low pay and often without benefits.

Including all workers under the legislation is particularly important when you take into consideration the stated intention of all the political parties in the Legislature to look towards small business as the main creators of jobs in the province.

- 1. The act must include all workers in the province.
- 2. The Pay Equity Commission must be given the mandate to raise wages for those workers in areas where there is no male comparison group.

Exemptions: Red-circling, merit pay, casual employees and skills shortages have traditionally been used by employers to discriminate against women. Such exemptions refer to the employee and not to the work, and therefore have no place in this legislation. It also opens up considerable potential for employers to reclassify their work force in order to avoid the provisions in the legislation.

The only reasonable exception under the act is worker seniority, providing this is not used in a discriminatory manner.

Job evaluation schemes: Unions have long been critical of job evaluation systems. Experience has indicated that management is the main beneficiary of such schemes. Usually done by management consultants, such plans have been created to justify unfair wage practices. Many advocates of equal value legislation are sceptical about whether these same consulting firms will now be able to produce the gender-neutral systems demanded in the act. Indeed, gender neutrality will be the major area of debate if this legislation is ever passed.

The very nature of the legislation provides for all sorts of pitfalls in this regard. Section 13 requires a plan for each bargaining unit within an establishment and another for the nonunion workers. In large companies, literally dozens of different bargaining units and, therefore, plans could exist. Section 5 allows comparison outside a plan if an appropriate comparison cannot be found in a particular bargaining group.

However, in all likelihood, these different plans will not be compatible. A female job class looking for a male job class for a comparison will have to undergo a new evaluation. It may well be the employer who insists that all possible job comparisons be made since subsection 5(3) defines pay equity as the lowest job rate when more than one comparison is possible.

Also, who pays for these costly pay equity plans? The commission can require the employer and/or union to pay, but not all bargaining units have the financial ability to undertake such a provision. Costs may force workers to go along with a plan handpicked by the employer.

Legislation and pay equity: Subsection 12(9) states: "A pay equity plan that is approved under this part prevails over all relevant collective

agreements and the adjustment to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the revelant collective agreements."

Subsection 7(2) states: "After pay equity has been achieved in an establishment, this act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength."

It is these sections that cause the most concern. Workers have fought for equal value legislation in order to enhance their collective bargaining rights. Here they are being asked to surrender their collective bargaining rights as the price for pay equity. This is not a fair trade.

What does "prevail over" mean? What is the relationship between adjustments and collective bargaining increases?

It has been women's relatively weak position in the economy, i.e. her weak bargaining strength, that has resulted in the existing wage gap. If a women's job class is pegged to a male job class, does this mean that there is no collective bargaining for the female group? Will it be possible for unions to bargain for equal pay at the bargaining table if this legislation goes through? Does the requirement for good faith bargaining mean that workers take their complaints about bargaining to the Pay Equity Commission of Ontario or the Ontario Labour Relations Board? Which legislation has precedence?

(1) Where they exist, unions must have the right to negotiate methods other than job evaluation to achieve equal value; (2) the act should conform with existing labour legislation demanding good faith bargaining on behalf of unions and business; (3) workers must be protected from reprisals for making complaints under the legislation; and (4) employers must be required to give unions all relevant information necessary in helping them enforce the legislation.

With respect to timing, the unreasonably long phasing-in period gives employers ample time to adjust their work force to take advantage of any loopholes existing in the legislation. Employers have had ample notice that equal value legislation is coming. As with other laws, it is only fair that this act go into effect immediately on passage.

We come to the following conclusions. The manner in which the government has decided to proceed on this matter has presented an intended dilemma for labour and the women's movement. The timing of the legislation, coinciding with an impending provincial election, has imposed a sense of urgency as equal value supporters push to get the legislation through before the demise of the New Democratic Party-Liberal accord. This situation may force them to settle for less than they deserve. The onset of the right-wing campaign also puts pressure on supporters, since a defeat of the legislation would be seen as a victory for the National Citizens' Coalition rather than as an attempt by supporters to win suitable legislation.

The acid test of this legislation is whether it will close up the wage gap between men and women workers. This is not the focus of Bill 154. Therefore, it is unlikely to achieve this end. Unless some critical amendments are made, as outlined by the labour and women's movements and in this brief,

Bill 154 will remain a cruel joke in response to women's demands for wage justice.

Mr. Chairman: Are there questions from members of the committee? There being no questions, I thank you for your presentation.

Ms. McCuaig: I have one question that perhaps a member of the committee could answer for me. Your last submission made the statement that every group in Ontario should get a fair or living wage. Perhaps a member of this committee could tell me how he or she sees this legislation providing a fair or living wage to workers in Ontario.

Ms. Gigantes: It does not. It is not intended to; it is intended to eliminate discrimination by one employer among his or her employees on the basis of sex. That is it.

Mr. Chairman: Thank you very much. Members of the committee, we are just about on time. May I suggest, for some of you who have been sitting for quite a long time, that we take a five-minute break? Agreed.

The committee recessed at 4:29 p.m.

## 1639

Mr. Chairman: Will the delegation from the Metro Action Committee on Public Violence against Women and Children please come forward? There is a presentation on behalf of that organization and it is number 135 if you are looking for your exhibit number. I welcome Ms. Marshall, and we look forward to hearing your comments whenever you are ready.

## METRO ACTION COMMITTEE ON PUBLIC VIOLENCE AGAINST WOMEN AND CHILDREN

Ms. Marshall: Thank you for allowing this opportunity for us to share comments. It is not a formal brief, but I did want to come and share some of our concerns, and more specifically, our support for this absolutely vital legislation that is before you right now. I believe you have a copy of the letter we have sent to the Attorney General (Mr. Scott). It is very short if I may read that or just refer to it.

We welcome the introduction of pay equity legislation and feel its attack on inequitable distribution of income in Ontario is long overdue.

"We can assure you that tightening the time line for implementation," which we understood was now under way, but I guess it was just the intent, "will successfully address one of the strongest criticisms we hear.

"We would also hope to see amended into law the intent described in your"--meaning the Atorney General's--"October 28 speech directing the Pay Equity Commission to go outside establishments if no comparison was available within.

"Beyond those changes, there is a particularly critical area of omission that causes us concern. We would urge that the scope of the legislation be expanded to include establishments where there are less than 10 employees and where often immigrant and visible minority women work without benefit of work place organization. Such an expansion of terms would also allow the counsellors working with female victims of violence in small rape crisis

centres and transition houses to be able, at the very least, to initiate a complaint-based action for comparison with prison workers who guard the male assailants."

Right now, the underfunding of the small support services that are in place in our society for women is in stark contrast to the supports, benefits and the pay that are in the prison systems. The relationship between those two jobs does feel like a critical one to think of.

We reminded him of, and the Attorney General does share, I think, our committee's understanding of how economic inequality increases women's vulnerability to sexual exploitation. Our committee's mandate comes from Metro council and it is to implement the recommendations of the Task Force on Public Violence Against Women and Children. We are working on training police, on addressing gender bias in the criminal justice system, with the schools in initiating programs, on law reform issues and on urban design.

But we do hear, in our work, women coming to us with case histories and stories that are incredibly distressing. They talk about their situation and we understand in a way that I hope you will too how the inequitable wage distribution in our society does make women so vulnerable in so many ways to sexual exploitation.

When the choices for jobs are so limited, and in the pink collar ghettos so many women are trained in, there may be the one job, and if they have some opportunity, they can leave that and bring their earning power to a position where, for example, they can afford housing in Toronto. In that situation, I have heard a woman talk about the cost-benefit analysis she goes through as she is a victim of sexual harassment at the hands of her employer. It is that kind of exploitation, women making the decision to leave jobs and go to work in the sex trade industry where the pay is higher because they are sole support mothers, because their names have been on the list for subsidized housing for three years in the city of Toronto; being on the list does not put a roof over their heads so they have made that choice. As we hear about it later, it was a choice that they did not stay very happy with because they were left so open to sexual exploitation.

I just hope that you think about how vulnerable women are, how their choices are narrowed by this wage inequity that we have now and those negative ripple effects that happen as a result of women having such unequal power. I hope you will keep that in mind as you consider this legislation, because I am sure by now you must understand how important it is for the women of Ontario. I also hope that it will encourage you to work diligently on coming to a very fast resolution, one that will give the kind of expansion and allow for access to this legislation and the benefits of this legislation to as many women as possible in Ontario. Clearly, it is not a matter of a woman getting a second car or a winter coat; not having pay equity and not having a liveable wage brings a level of consequences that we see far too often. I hope you will consider those.

Ms. Gigantes: Thank you for your presentation. Can you tell us a little about your group? I have not heard of it before and am fascinated by the notion of action against public violence.

Ms. Marshall: In 1982, when the task force on public violence was established, then chairman Paul Godfrey gave that name to the task force. I understand it was an attempt to differentiate the work of that task force from the Metro chairman's special committee on child abuse. He thought the word

"public" dealt with that quite well. It has been a word that we have never been comfortable with because it is such an artificial distinction. Is the stranger in your home "public violence," or is it a spouse attacking on the street? It is quite an artificial term. We do not deal specifically with child sexual abuse.

We are dealing with pornography and have a three-pronged approach to Criminal Code law reform. We hope to see and have been encouraging the Attorney General to enact civil remedies for women who have been actually harmed by pornography. I could have talked about pornography in the work place and how that feeds into the economic vulnerability of women. Particularly over the past month, we have been hearing about that because of some publicity work we have been doing. We are also working in the school systems to have programs in grades 7 to 13 address coercive sexuality. We work with the police and are encouraging judicial training. We do a lot of monitoring of sexual assault sentencing, development of programs, in that area.

Ms. Gigantes: Were you present when the submission was made by the Communist Party of Canada? A final question from one of the representatives was whether legislation of this kind will provide a liveable wage for people and my answer was no. A lot of the concern you tried to address through your presentation deals with a liveable wage as opposed to a nondiscriminatory wage.

## 1650

Ms. Marshall: Yes, this is definitely a first step, not a last step, and I hope it is understood that this bill and some of the amendments—such as tightening the time lines and the cross—establishment comparisons and looking at whether this can be made available for the small establishments—will be such an important first step, but it is not the only answer. It was the speaker before who thought that education of women was the answer, which certainly intrigued me and made me especially pleased that, in a week which had been very hectic, I was able to come today. That approach, moving away from how important and how vital this legislation is and will be, concerns me a lot.

Ms. Caplan: This is a follow-up. The Attorney General has explained very clearly that this legislation does not address the issue of low wages; rather, it addresses discrimination in the work place based on gender. That is an important premise of the bill. I state that because we had an individual making a representation before the committee which suggested that in fact we were talking about paying everybody the same. I want to clarify that.

Ms. Marshall: No, I think we are quite clear. So often women enter women's training. I come from a background where I have done a lot of women's training. They are trained for economically undervalued, female-ghettoized jobs so often. We talked to our guidance counsellors in the schools and they are still promoting those female ghettos, which is what makes this bill so necessary. Women cannot live in the city of Toronto as sole support mothers, which was never their plan--to be a sole support mother and live in this situation--but that happens.

Ms. Caplan: You request the ability to go cross-establishment as opposed to cross-bargaining unit. Again, are you aware that the Attorney General said that as the first order of business for the Pay Equity Commission, it would address the issue of female work establishments where there were no male comparisons and that there are many methods without just doing a straight cross-establishment? You recommended cross-establishment. I

do not think that there is a broad base of support. Certainly the business community is having enough trouble with cross-bargaining-unit comparison. It is an issue that should be recognized and the Attorney General has said the Pay Equity Commission will address that as a priority.

I suggest that any and all ideas you have as to how that should be done would be welcome. I know three or four methods that have been used and wonder if you had heard of any, other than just crossing establishments, because there is much concern that we do not want to get into a province-wide wage scale for all workers. Would you agree that we should not be looking at a province-wide scale?

Ms. Marshall: I can certainly see the problems with that. Our concern is not only that the Pay Equity Commission has heard that in the minister's October 28 speech; that should also be amended into law so some comparison outside of an all-female employee situation can be made. Cross-establishment is the most obvious one, but I leave it of course to this committee, if there are others and I am sure there are.

Mr. Chairman: Are there any further questions? I want to pursue for a moment the same question Ms. Caplan was asking, the comment you made about making comparisons beyond establishments in terms of the implementation of that. I think there is some sympathy for that on this committee, although there is some real apprehension about how you would make it work and work properly.

Would you also suggest in the extension of the formula proposed for comparisons within Bill 154 as it stands now that you go outside of geographic areas, for example? How far would you go in terms of making those kinds of comparisons to develop an equitable pay situation? I wonder if you could embellish your comments a little bit, which is, I think, what Ms. Caplan was getting at, at least in part.

It is one thing to say it and another thing to do it in a way that makes sense and is fair to all parties. We are struggling with that question just a touch at the moment, and you may have some views you can share with us.

Ms. Marshall: If these would be complaint based, if they would be coming to the Pay Equity Commission—and the commission has a mandate that is province—wide—I think there would be some opportunities to go geographically out of a narrow, regional comparison to other places within a province. Am I correct in that?

Mr. Chairman: What you are saying is part of what we are having some difficulty with because, when you start to move outside of regions, ostensibly at least, certain regions have a financial comfortability, in the sense that there is a certain cost of living that may be associated with Metropolitan Toronto that would not be applicable to Thunder Bay or Kenora. If there were no limitations on those kinds of comparisons, obviously, a group that felt it was slighted in terms of its pay level would want to go to the highest geographic comparison, irrespective of where that might happen to be.

Are you suggesting that the field be wide open? To use specifics, a group of day care workers in Toronto could use, as a fundamental base of comparison, another group in the automotive section of Windsor, which is a higher-paid group. How far do you go with those kinds of comparisons?

Ms. Marshall: You notice that I did not say your job was an easy

one. I think it is an incredibly challenging job you have before you. The obvious difficulties of moving without some cost-of-living formula to reflect the difficulties and the urban costs would be a problem. Obviously, leaving it wide open would not be an appropriate solution.

I do think there are ways and there are guidelines that would allow for some comparisons. I am thinking of the day care workers. If they are living in a region where there is absolutely no comparison, what can they do? That does not present itself.

Ms. Gigantes: You used an example in your presentation in which you proposed that we might look at the people who work in transition houses and the people who guard the people who put the people in the transition houses. I think that one of the things we should not get bamboozled by is this whole notion of regional wage rates. As far as I know, our correctional officers in Ontario get the same wage whether they are working in a jail in Kenora or a jail in Windsor.

Mr. Chairman: Not to debate, but every group does not. We are not talking about just that group. We are talking about a whole series of other groups.

Ms. Gigantes: There is a difference. Some are women.

Mr. Chairman: That is a little unfair, Ms. Gigantes.

Ms. Gigantes: If you look at it, Mr. Chairman, you have to admit there is a pattern.

Mr. Chairman: In your mind, there may be a fixed pattern. In my mind, it is a much--

Ms. Gigantes: The government of Ontario says there is a pattern that will cost millions of dollars to redress among its own workers, and I suggest to you that the kind of comparison that was presented here is not a bad way of starting.

Mr. Chairman: You will, of course, have the opportunity to bring those thoughts forward during clause-by-clause debate.

Ms. Gigantes: I am just trying to be helpful, Mr. Chairman, since you had such a dilemma.

Mr. Chairman: I know you are trying to be helpful. All I was trying to do, Ms. Marshall, was to see if you had any views on a very complex and a very controversial kind of thing that we have been trying to look at here, in the light of some of the recommendations that have been made to us. It may be possible in the very narrow public service to make the sorts of comparisons my colleague talked about, but there are a virtually unlimited number of groups out there.

#### 1700

For example, we had the tourist operators speaking to us today. They are usually very small employers, in terms of the number of employees they have. The employees are seasonal, and their numbers jump up and down below the 10 figure that is used in Bill 154 as a minimum number. The operators have some real concerns about their industry, which is extremely labour intensive and

not particularly highly paid, in some instances. That is why I raised this question. If you start to get out of geographic areas in making those comparisons, that industry could be in a very sensitive position very quickly in terms of its economics.

Ms. Marshall: I cannot comment on the tourist industry. I can comment on only the industries I know so well. Would you be willing, Mr. Chairman, to make a comment on the comparison that was suggested? The inequity there is so great and is sex based to such a great extent in regard to a rape crisis centre and the counsellors who often have much more training.

Ms. Fish: I would like to hear from the chairman myself.

Mr. Chairman: You might. Sorry, go ahead.

Ms. Marshall: Their levels of expertise seem so much higher than those of the prison guards, for example, who are guarding the rapists.

Mr. Chairman: As you well know, this legislation does not cover those circumstances. The only thing our committee can do is take a look at the the kind of comparison you and Ms. Gigantes alluded to and see whether we can make it a workable addition to the bill. I do not know whether it is workable at this point.

Ms. Marshall: It would be a complaint-based initiative, which narrows it considerably, at least to allow those people to have some access to the commission.

Mr. Chairman: I thank you for your presentation to the committee. It was very interesting. You have added another dimension to our information on the bill, and we appreciate your taking the time to come before us.

Ms. Marshall: Thank you. I wish you all well. You have a challenging job.

Mr. Chairman: I would like to call forward representatives from the Ontario Trucking Association now. We have Raymond Cope, president, and David Bradley, director of economics and assistant to the president, coming before us. Their exhibit is 136, for the information of members of the committee.

Gentlemen, welcome to our deliberations and discussions on Bill 154. We look forward to hearing your views on this bill. There may be some questions from members of the committee, following your presentation.

## ONTARIO TRUCKING ASSOCIATION

Mr. Cope: We thank you very much. We have been asked to be brief in our submission. Inasmuch as David Bradley has been the one who has interacted with our committees about their thinking on this, I am going to let him make the submission of our views, and we can both be here to answer questions that may arise.

Mr. Bradley: Mr. Chairman, I know you have seen several groups from business and other sectors. Therefore, we have erred on the side of brevity in our brief, and I will attempt to do the same in our presentation here today.

Mr. Chairman: That gives you additional marks; you know that.

Mr. Bradley: That is what we are hoping for.

From the outset, I would just like to state that the Ontario Trucking Association does support the principle of pay equity for women. It appears to us that the issue of gender equality is really a social problem and not an economic problem. It may be manifested in economic numbers as such in pay scales, but we think the root of this has a social basis.

The legislation proposed in Bill 154, to our mind, is just one option that is available for addressing the issue of pay equity. From our standpoint, it is not the best option. Systemic discrimination of the type we are speaking about here is a societal problem, and we believe the place to start from is education. If private and public sector resources were put to education, that would be the best means of addressing this issue. We feel that Bill 154 simply addresses the symptoms and not the root cause and that it risks imposing excessive costs on one group, namely, employers, and only masks the real problem.

Turning to page 3 of our brief--and I am sure you have seen several of these before--our concerns about legislating pay equity are summarized there. Chiefly, if I can highlight just one right now, it is our feeling that employment of both men and women could actually decline through automation, layoffs, etc., if the type of legislation that is proposed is brought into effect.

We are also a bit concerned about the thrust of government policy at this point. We feel it appears somewhat inconsistent. You would have to look at the trucking industry in particular when you take a look at that issue. We feel it is ironic that, on one hand, the government of Ontario is proposing deregulation of the trucking industry and a move towards market forces and all the benefits that are inherent in that, and on the other hand, in this arena it is calling for more regulation on businesses, trucking being one of the industries affected.

Over the course of the past year, we have appeared in front of several committees and task forces, and I have listed the issues: hours of work and overtime, mandatory retirement, occupational health and safety. We are now getting into pension reform, and the list could go on. We are not saying those are necessarily bad things. We are not opposed to social justice, but we do feel we have to start drawing the line in Ontario, particularly if we are going to be facing an open border with US carriers, who are not subject to this kind of legislation. It makes it very difficult for our industry to compete, which is something the government of Ontario suggests it would like to see, increased Ontario competitiveness on an international scale.

On page 4 we turn to our specific concerns about Bill 154. We have isolated a few, such as costs to employers. I think, again, this is something you have heard about. In the trucking industry, we are not sophisticated, for the most part. Some of our larger companies will already be on the road and will have some form of pay equity plan or are doing something in that area, but for the most part, our members do not have the resources on staff to bring this about. It is going to result, we think, in major costs for them to be able to comply.

Another concern we have with Bill 154 in that regard is that, if we go to the expense of putting together a pay equity plan, we have no assurance that after even one complaint we still be able to use that plan, that we will not have to scrap it and start all over again. We are concerned that our upfront costs may not be the only costs we have to incur in this regard.

We are also concerned about the level of bureaucracy that potentially could be created from Bill 154, specifically with respect to the Pay Equity Commission. Therefore, we suggest that not only would employers be asked to face increased costs but also we think Ontario residents as a whole will. Someone will have to pay for this commission.

We are also concerned that, as it appears to us anyway, employers are being considered guilty before proved innocent. Even an employer with no problems from a pay equity standpoint is going to be required to develop a plan. The employer must defend in the case of frivolous complaints. We do not see any compensation for that here. We find that somewhat objectionable.

We also believe the value determination criteria outlined in section 4, and again alluded to in some instances through allowable exceptions in section 7, are not specific or broad enough. We would like to see some added features to section 4.

The kinds of things we are looking at, and some of these are drawn specifically from the trucking industry where we think we have particular problems, are productivity; special qualifications to do the job--in the trucking industry you are required to have certain licences and certificates to be able to operate a vehicle; the number of hours spent on the job in a week and the time of day the work is conducted--several drivers, for instance, work odd hours and extensive hours, and we feel that should be reflected in the value of that job; the risks to employers from failure of employees to conduct tasks in a proficient or safe manner.

## 1710

We have a major concern in the trucking industry with respect to insurance. If someone is out on the road with a \$100,000 rig, we think there are implications in comparison to the secretary who is sitting in front of a word processor in the office for lack of a better example. There is a value to us of having that person on the road. The value of that person should be higher to us potentially than for a secretary.

With regard to the value of goods or equipment the employee is directly responsible for, that is really the same point.

With regard to work place location and travel involved, if someone has to commute downtown, has to take a GO Transit train and an hour and a half to get to work, or someone takes 15 minutes to get to work, we think the employee takes that into consideration when he decides to join a company. We think it should be reflected in this legislation. Safety considerations should be reflected in this legislation as well. Again, we believe that with someone working in an office environment, vis-a-vis someone working on the road, there are enormous safety considerations that have to be taken into account.

We are also concerned about the general predominance formula defined in Bill 154. Really, it is confusion on our part, or perhaps misunderstanding, that we see no statistical basis for the 60 per cent-70 per cent ratios proposed in Bill 154. It seems to us that, particularly in a small business, a particular job classification could move from being male-dominated to female-dominated virtually week by week. We would like to see something addressed there.

We have made some recommendations that appear on page 6. I would like to read them out to you: first, that passage of Bill 154 be delayed to allow for

redrafting of sections dealing with the value determination criteria, gender predominance formulae and development of an appeals/compensation procedure vis-à-vis frivolous-complaints; second, that the government of Ontario provide financial assistance to companies for developing pay equity plans; and, third, that the government of Ontario conduct an educational campaign to address the problems of discrimination at the social level and support the study of other affirmative action initiatives.

At this time, we would be pleased to take any questions you may have.

Ms. Fish: Thank you very much for your brief. I wonder if you could assist me a little in telling me about some of the constituent companies in your association, and more particularly, if you have any sense of the size of those companies.

Mr. Cope: We have something in excess of 800 members. Of those 800 members, there are some 600 trucking companies per se. They range from companies which may consist of one person and the truck to companies that range as high as \$400 million in revenues and the assets and employees that go with that size of operation. We have companies that are very small and companies that are quite large. Of our 600 members, over half of them earn revenues of less than \$1 million a year. Some companies, as I said, earn several hundreds of millions of dollars a year.

Ms. Fish: At less than \$1 million a year, how many employees would there likely be?

Mr. Cope: Our overall average of employees over our whole membership is something of the order of 22 for the average company. But that is made up of companies that have 3,000 and companies that have one or two.

Ms. Fish: Do you have the distribution figures on your companies, to know how many?

Mr. Cope: We do not have that breakdown with us, but we have it available.

Ms. Fish: Would it be possible, if you have it, to make it available to us?

Mr. Cope: Yes, we could make it available to this committee.

Ms. Fish: That would be super. I would certainly appreciate that.

As a related question, do you have a sense of how many women are employed in the industry? I know you have said repeatedly, "Not very many, and mostly in office support." I wonder if you have a sense of what the proportions are, by percentage or otherwise.

Mr. Bradley: Percentage-wise, probably five per cent or less.

Ms. Fish: Do you have a sense of the numbers of employees overall who are in the business? What does the five per cent represent?

Mr. Bradley: In Ontario, if you look broadly at the trucking industry and take into account the courier sector, the private side, etc., you are looking at on the order of 100,000.

 $\underline{\text{Ms. Fish:}}$  I am trying to look at some comparable numbers, but I guess  $\overline{\text{I would look}}$  at the 600 trucking companies in the Ontario Trucking Association because that is where you are going to get your figures on the number of employees.

Mr. Cope: I think you have to understand the number that Mr. Bradley has just given to you. The trucking industry is made up of two big components. You have what are called the for-hire carriers, and you have companies that have their own trucking fleets but are not in the trucking business, companies like Consumers Distributing, Sears and Eaton's. They are not in the transportation business but they have their own fleets. So in the trucking industry we have about 100,000 people, but roughly 50,000 of those are on the for-hire side and 50,000 are on the private carrier side.

Ms. Fish: When you are talking about the problems with the bill, are you talking for both the for-hire and private carrier or principally the for-hire side?

Mr. Cope: As of today, we have returned to representing private carriers. We had a six-month period where we did not represent private carriers but as of this afternoon, we once again represent private carriers.

Ms. Fish: What I meant was, in terms of the preparation of your brief and the points being cited, was that principally on the for-hire side of your association?

Mr. Bradley: Given the timing it would have been, but I really believe it would run across the industry generally.

Ms. Fish: You said there are about 50,000 employees on the for-hire side?

Mr. Bradley: Yes, on each side.

Ms. Gigantes: The figure for women was 5,000, so about 5,000 women out of 100,000.

Mr. Bradley: That is a very crude estimate.

Ms. Gigantes: We do not mind being crude.

Mr. Cope: I do not know that we have ever surveyed that to establish accurate information. I do not know whether or not five per cent is accurate. I know it is low, but how low, I cannot be sure.

Ms. Fish: Would it be possible to ask a question of staff? On page 4 of the brief, on value determination, the deputants have indicated a number of conditions, beginning at the bottom of page 4 with productivity and proceeding on to the top of page 5. I take it you feel these are not currently covered by the value determination.

Mr. Bradley: It is not clear to us.

Ms. Fish: Could staff respond to that and tell us whether those items would be covered and, if so, how, and if not, that they are not?

Dr. Todres: I will treat productivity separately, but if we go down the list on the bulleted points, I would argue that special qualifications

would be handled under the skills criterion; the number of hours worked under working conditions; the risks under working conditions; the value of goods under responsibility; and the work place location and safety considerations under working conditions.

From what we have heard from others, productivity could be construed to be a function of merit. Merit is usually determined on the basis of productivity. That is the only item that does not have an automatic fit.

Ms. Gigantes: Can I suggest that it might very likely be effort combined with skills, because if you are breaking rocks, for example, your productivity is how many rocks you can break. Surely in an employer's mind, if there is some concept of effort involved to do a job properly at a level where you are going to keep an employee--

Mr. Bradley: What we are saying is, we would just like to see some more specificity to this. We have been involved for two years in these discussions, appearing before other panels and other groups. We have been hearing "could be" a lot. We would like to avoid a lot of expense and trouble down the line, if it could be specifically laid out here so we know where we stand as opposed to when it reaches a public forum and we get "could be" a lot again. We would just like to see some more precision in the legislation.

Mr. Cope: Could I raise one example? I was very interested to hear staff talk about how each of these could be handled. This "risk to employers from failure of employees to conduct tasks in a proficient or safe manner" for us is terribly important. I know the chairman will remember the spills bill, and some of the others will recall the considerations that went into the passage of those regulations. But the situation today is that companies are liable to a whole lot of penalties if things go wrong while they are carrying products across the highway, especially if those products are dangerous goods or goods that could somehow cause damage to the environment.

The point we were making at the time of the spills bill is that the liability is unlimited. The liability can go as high as it is. If somebody values the damage to the environment from a spill at \$300 million, there it is. That company would have that responsibility to meet the legislated and regulated requirements.

I think that when you get that kind of risk situation, it is a special kind of consideration. While you might say it is covered under the word "responsibility," yes, that is true, but the responsibility there is so specific and so extensive as to, in our view, warrant special treatment.

Ms. Gigantes: Could I ask the presenters if the same situation does not exist, for example, in some offices, where a legal secretary, if she manages to get something wrong, can have a firm up to its neck in a lawsuit for failure to carry out professional duties?

Mr. Cope: No, there is a difference, Ms. Gigantes. A company can obtain insurance for a secretary making a mistake that leads to some kind of legal suit. On the other hand, a trucking company cannot obtain insurance for the kind of damage to the environment that might arise out of an incident on the highway, such as the spills bill has given rise to, so there is a difference.

Mr. Charlton: Supplementary to that, I think the point you just made about responsibility versus exceptional responsibility will be a point the

commission will not have a lot of difficulty dealing with if, in fact, the rates of pay reflect that exceptional responsibility. In other words, if you have shown a dramatic difference in what you are prepared to pay to a driver who is hauling toxic waste--the risk situation you are talking about--and the driver who is not, then the way in which you have weighted that responsibility in that situation is going to be very clear to the commission.

The bottom line, though, is if they find you are not attaching any more reward for that extra responsibility than you are for the driver who is not hauling that stuff who is going to be liable under the spills bill, then we do not want you to try to impose it as a condition on comparing other jobs to the drivers.

Mr. Cope: We accept that condition. I have no problem with that.

Mr. Charlton: Then, in fact, we are telling you it is already covered. To a great extent, responsibility is going to be defined in the way you approach your ability to set responsibility out in your plan.

Mr. Bradley: That is true. That remains to be seen, is all I can say.

Mr. Chairman: Ms. Fish, have you concluded your questions?

Ms. Fish: I certainly have. Thank you very much.

Mr. Chairman: Any further questions from members of the committee? There being no further questions, I would like to thank the Ontario Trucking Association for coming before us. Gentlemen, we always appreciate your input. I guess we are keeping you rather busy, from your remarks, with the various activities that are going on around this--

Mr. Cope: Yesterday, the two of us were up in Ottawa dealing with a government that wants to deregulate us.

Mr. Chairman: I am glad it is giving you some areas of interest as well to address, but we do appreciate your input and your thoughts. Thank you very much.

Mr. Cope: Thank you.

Ms. Gigantes: Do you hire women to drive your hazardous waste because our driving records are so much better?

Mr. Cope: There certainly are women who are used as drivers right across the industry, maybe not as many as you might like, but there are.

Mr. Bradley: And they are good.

Mr. Baetz: What time do you want us back tomorrow?

Mr. Chairman: You do not have to be back here until tomorrow afternoon.

The committee adjourned at 5:25 p.m.





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
WEDNESDAY, MARCH 11, 1987

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

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Partington, P. (Brock PC)
Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Epp, H. A. (Waterloo North L) for Mr. Polsinelli

Lupusella, A. (Dovercourt L) for Mr. Knight

McNeil, R. K. (Elgin PC) for Mr. Rowe

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor. L.

#### Staff:

Evans, C., Research Officer, Legislative Research Service

#### Witnesses:

From the Council of Ontario Construction Associations:

Frame, D., Executive Vice-President

Martens, E., Consultant; with Sibson and Co.

Humphrey, S., Pay Equity Chairman

Thomson, J. C., General Manager, Labour Relations Bureau, Ontario General Contractors Association

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

#### LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, March 11, 1987

The committee met at 2:10 p.m. in committee room 1.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: This afternoon we will be dealing with the consultants' report that emanated out of our discussions with the Council of Ontario Construction Associations. At that time, the committee indicated it wanted to receive further information from the consultants, particularly and more specifically with respect to the manner in which they carried out certain comparisons in the wage structure that they provided by way of information to the construction association.

The committee decided then to invite the consultants back to expand on their methods of comparison. We have Enelise Martens, a consultant with the firm, with us this afternoon to respond to any inquiries the committee may wish to make. Also, I believe, David Frame, executive vice-president of the council, is here. Will they and any other members of the delegation they would like to have with them come forward and take seats at the front, please?

Perhaps you could start by introducing yourselves. I think most of the members of the committee are already familiar with at least some of the delegation, but you may wish to reintroduce yourselves, and then we can get on with the comments you wish to make. If you feel you would like only to respond to questions from the committee, rather than make a presentation, we can handle it that way, if that is your wish. Otherwise, you can just place the information that was requested, which I think is clear to you; if it is not, we can go into it further. If you want to go on with your presentation, that will be fine as well.

Welcome to our committee again. We are pleased to see you back. You are one of the few groups that has come back a second time, and it was in response to a question that was raised but could not be answered at the time. Mr. Frame, perhaps you would like to start off.

# COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS SIBSON AND CO.

Mr. Frame: Let me start by introducing a couple of new members of the group. At my far right is Jim Thomson, who is general manager of the labour relations bureau of the Ontario General Contractors Association. He is here representing the group as the labour relations expert. Immediately beside him is Sandi Humphrey, who is with the Ontario General Contractors Association and who is also our pay equity committee chairman. Beside me is Enelise Martens, a consultant with Sibson and Co., who did the overwhelming majority of the work on this study and the principal person you asked to come talk to you today. I am David Frame of COCA, the Council of Ontario Construction Associations



We will start by asking Ms. Martens to make some statements in a little more detail than what we were able to do the other day, explaining the basic approach to the study she did and the reasons behind it.

Ms. Martens: I want to establish some credentials. I did spend 10 years with the Ontario government, during the last five of which I was chief of the classification policy section in the Civil Service Commission. When the pay equity legislation was first brought around, back in 1976, I did a critique or commentary on that. I also helped to design the benchmark factor comparison system currently being used for the management groups there.

I think two issues were left unresolved at the last meeting. One of them related to the precise hourly rates that were used for the comparisons. I want to refer to that. The hourly rates we used to create the annualized base were the barebones rates. For instance, the carpenter's was based on \$19.13 an hour, to which was added \$1.91, the 10 per cent vacation or holiday pay, \$1.15 for health and welfare and \$1.55 for pension, for a total employer outlay of \$23.74.

I did not use the \$23.74 in creating the annualized basis. If we were to add those numbers on, the salaries of the carpenters and labourers increase and the spread between the receptionist, typist and office manager and the comparable skilled trades groups widens even further, not tremendously significantly, but it does stretch the other way.

If there are no other questions on that, perhaps we will move on to the next stage. That was the question of how on earth they would come up with these comparisons in the first place, because the initial gut reaction people would have is that the jobs are simply not comparable. You can compare anything.

A few comments might be in order here in terms of what job evaluation systems are and what they are not. They are not hard, scientific, mathematical calculations. At best, they are really a series of justified judgements. If I can use a sports analogy, in a football game, the team that gets one point more wins. Job evaluation is a little bit more like judging figure skating. You have a group of about 10 judges who are watching the same event; yet their assessment of that event will be slightly spread apart, but you do finally get a consensus.

That is really what the job evaluation process is as well, particularly in complex point-rating schemes. You have to have evaluation committees that come together and assess or measure each factor or component. Some judgements are, let us say, more intuitively obviously than others. With other judgements, it is really a long thrashing-out process in terms of whether it really swings this way or that way.

In terms of designing job evaluation systems, what we would try to do would be to gear the system to measure what is important to the particular organization. For instance, if we were designing a system for a retail organization, what we would want to be highlighting and bringing out are the marketing and the sales characteristics, the interpersonal skills that are required. We would want to focus on that area or, let us say, give it greater weight or emphasis.

If we were designing a system for a high-tech research organization, interpersonal skills really have no bearing at all on the particular jobs that



are being done. We would want to look at the technical expertise, the creative thinking, the analytical abilities and so on.

In terms of the job evaluation system we used here, perhaps you could turn to page 4 of the original report. We have tried to outline some of the basic fundamental types of job evaluation systems. They range everywhere from whole-job ranking, which is simply looking at one entire job in comparison to the other entire job, to a classification system which the Ontario government uses right now for the majority of its unionized jobs. In effect, that is technician 1, 2, 3; cleaner 1, 2, 3, and so on. It is a grading classification system.

Paired comparison breaks the job down into components and makes comparisons between two sets of jobs. Factor comparison and point-rating do the same thing; they break the jobs down into identifiable components and they make comparisons in some cases with points and in some cases without points. The benchmark factor comparison system is the one that is used by the Ontario government right now for its management jobs.

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What we did was to combine the paired comparison and the factor comparison methodologies. The first thing we had to do was identify compensable factors. I do not know of any job evaluation plans that have a clear outline right now of systems, based on only those four factors of skill, effort, responsibility and working conditions. Most job evaluation plans cover a far broader range. However, these subcomponents can be grouped and probably allocated under one of these factors.

What we did was to take those four factors and break them down into further subcomponents. If you look at page 6 of the report, it lists 14 subfactors. The last page of the report, appendix B, is the paired factor comparison worksheet. Again, it shows you the methodology we used for it. I might go over some of these factors so that you are aware of what the meanings were.

Under knowledge, we were looking for the theoretical and technical knowledge that is required, any licensing or other accreditation—for instance, if you need an engineering degree, and skilled trades need specific licensing requirements. It also looks at the technical knowledge that is required, the work procedures, government acts, regulations and so on and so forth.

Mental skills and abilities looks, obviously, at the mental abilities: reasoning, analytical abilities, interpersonal skills, communication abilities and so forth.

Physical skills and abilities looks at the operation of equipment: typewriters or heavy machinery, power saws, whatever. It involves the physical requirements to be able to do the job.

Judgement and decision-making looks at the complexity of the variables that exist on which to base judgements: the options available, how easy it is to make those kinds of decisions and the impact of making your own decisions.

Physical effort looks at duration of the effort, the extent to which it is required and so on.



The adversity and duration of tasks looks at the number of different types of tasks a person has to cope with and how frequent are the interruptions. Is it a case of having to pick up and put down and deal with a number of different variables, or is it primarily one-directional?

Guidelines and guidance looks at the availability for assistance. To what extent is the job proceduralized? To what extent are manuals available? To what extent is an additional level of supervision or technical knowledge and expertise available to which somebody can refer?

Responsibility for planning, either one's own work or others, involves scheduling other people's work, devising methods and so on.

Responsibility for human resources, material resources and financial resources is pretty well self-explanatory. They are the kinds of factors that are used by the Ontario government, again in testing the accountability factor.

Contacts looks at the internal contacts, external contacts, the nature, the level and the purpose of that.

Nature of the working conditions looks at the unpleasantness or pleasantness and so on: control over working conditions, ability to modify or obtain relief from those.

These were the factors that were used. We did a paired comparison, which means that we took every job of these five jobs and compared each job to every other job on each of these 14 subfactors. The comparison worksheet at the back of the book outlines the procedures on that.

What you would do is to take job A in terms of knowledge and compare that on a straight assessment. Is it comparable to, is it stronger than, or is it weaker than? If it is equal to, each job gets one point. If it is stronger than, the stronger job gets two points, the weaker job gets zero points and vice versa. There are three options available there.

For knowledge, each one of those five jobs was compared. Let us say job A was compared to jobs B, C, D, and E. Job B was compared to A and C and D and E and so on.

On each particular factor, separate decisions were made. The results were then accumulated, and they resulted in a hierarchical, numerical value.

Individual jobs were then looked at to cross-check in terms of where they came out. This was a procedure that was embarked on by two people, ourselves and the consulting company, and the results were as we indicated in terms of comparability.

I could design a system that would give you completely different results. I could take the four factors, weighted by giving 85 per cent to working conditions, and distribute the remaining 15 per cent among the other three factors, and your labourer would come out at a higher level than your company president ever would. But that is not a sound job evaluation procedure.

Similarly, I could redesign the job to the extent that, let us say, I eliminate the office manager job and the receptionist-typist job and combine them into one job. Quite possibly that one job would come out in between. It would not equal either one or the other; it would slide between.



In this particular case, I did visit a construction company that was used for a sample. I spent about a day and a half there interviewing the people and writing up the descriptions. The descriptions are at the back of the report. These are detailed job descriptions and factorial analyses of the jobs. They are contained in appendix A, so you can look at those for yourselves. The evaluations were done.

If you turn to the table opposite page 8, our conclusions were that the estimator was at a significantly higher level; the accounting and office manager and the carpenter, using the evaluation system I have gone through, rated as comparable; and the labourer and receptionist-typist were comparable.

In terms of the implications of those results, what we tried to do was to indicate the specific requirement that the legislation would have; that is, the compensation of the two jobs would have to be equated.

We ran into a number of complications that have been outlined on pages 9 and 10. First, in terms of applying the legislation, we have questions about what is a female-dominated job and what is not. It is quite possible an argument might have been able to be made that the accounting and office manager, even though it is currently occupied by a female, is not a female-dominated job. It is an argument that could either be accepted or not accepted. The person who is doing it right now is female, whereas the person who was in there before was male. We happened to go in and do the review at the time it was female-dominated and so, therefore, it would be subject to pay equity legislation. Had we conducted the review a year and a half earlier, then that position would have been male and it would not have been a problem under pay equity legislation.

The other difficulty we ran into was what is meant by compensation. We dealt with that a little bit the last time around. If the intention is that compensation means absolutely everything, then small firms would have to hire not only job evaluation consultants but also actuaries to cost out the various benefit packages. I am not an actuary. I do not know how to put a value on having a possible option of a particular benefit, the value of taking the option versus not taking the option and so on.

# 1430

Table 1, opposite page 8, I think gives you a fairly clear picture of the kinds of difficulties that are encountered in trying to come up with what is compensation. That really deals with the value costing of it at the top of page 10. Definitions of employer, employee and establishment were other areas of specific difficulties. Some of our clients preferred to leave it as broad as possible; others wanted to narrow it as much as possible.

The main point we wanted to bring out was that by finding comparabilities between inside office jobs and outside site or construction jobs and in trying to apply what is supposed to be equitable legislation, a number of inequities result. We have highlighted some of these on page 10.

Internal inequities: The adjustment of the accounting and office manager to the level of a carpenter would mean an equalization between that job and a previously much higher ranked job, which means that what is created is a ripple effect. It runs all the way through the system. Everything has to be bumped up to make internal equities.

The other thing I think should be pointed out is this. Had we gone to a larger office, it is quite possible we would have found male computer



operators, male supply or inventory clerks or somebody of that ilk, to whom the receptionist-typist might have been compared, in which case the equalization of pay that would have been necessary would have been substantially lower than the amount that is envisaged here.

Table 3, opposite page 12, tries to point out that it is not only the size of the office but also the particular nature of the industry that is adversely affected. Had it been a larger company, had it been in the general insurance field or perhaps even in an engineering field, I am sure we would have found other male-dominated jobs to which comparabilities could have been made.

To summarize, the finding that I personally, as a woman, find most devastating is that those employers who have been progressive, who have taken steps to try to adhere to employment equity principles and who have made efforts to bring women into nontraditional areas of work are precisely the employers that are now going to be hit by pay equity and be in a position where they would have to make salary adjustments. Their more recalcitrant competitors would not have to make those adjustments. To me, it is an irony that what we are trying to achieve with this legislation is pay equity, but at the same time we are creating very adverse situations for those companies that have been trying to adhere to employment equity.

That summarizes any definite statements I wanted to make. If there are any questions on this, I will be glad to answer them.

Mr. Chairman: Are there any other comments from the panel or delegation before we go to questions from the committee? If not, then we will go to questions.

Mr. Charlton: Although I understand what you are saying about the difficulty in valuing some of the benefits, you have confirmed some of what I raised the other day; that is, in one case you have included benefits and in the other case you have not.

Ms. Martens: No, not at all. I have included strictly base salary. If you want to look at the top of page 7--

Mr. Charlton: Just slow down for a minute. I know that is what you said, but you have to understand what benefits mean. You told us that you included the \$1.15 and the \$1.55.

Ms. Martens: No, I did not. We did not include them.

Mr. Charlton: Did you include the fact that in the base rate of his pay, the construction worker--the carpenter or the labourer--gets the money with which he purchases, either through his union or on his own, his insurance package?

Ms. Martens: No, that was not included.

Mr. Charlton: But it is in his base rate.

Ms. Martens: No, it is not.

Ms. Humphrey: We subtracted that from it.

Mr. Charlton: You have subtracted what?



Ms. Humphrey: We have deducted the overall cost to the employer for the carpenter, which is \$23.90.

Mr. Charlton: Yes, right.

Ms. Humphrey: That is not the effective \$34,674 that is here. We have deducted from it the \$1.15 for welfare, the \$1.91 for vacation pay and come up--

 $\underline{\text{Mr. Charlton:}}$  You have deducted those, but you have left the benefits he buys on his own in there.

Ms. Martens: No. There is a chart which I--

Mr. Thomson: It is a straight hourly rate.

Mr. Charlton: It is a straight hourly rate out of which he purchases benefits, either through his union or privately, after he gets the money, the same benefits included in the medical package which the salaried employee gets.

 $\underline{\text{Mr. Thomson:}}$  Maybe I can help. If you look at that chart opposite page 8--

Mr. Charlton: I am looking at them both.

Mr. Thomson: Down where you have "OHIP/Health and Welfare," it is \$1.22 for the labourer; that money is put in by the employer on his behalf.

Mr. Charlton: That is right, and you have deducted that.

Mr. Thomson: We have left that out.

Mr. Charlton: That is right. That part is clear.

 $\underline{\text{Mr. Thomson:}}$  We left out anything that could have been purchased or provided for the staff.

Mr. Charlton: Are you telling me you think this carpenter has no medical coverage, dental coverage, life insurance or long-term disability?

Mr. Thomson: No, he has all that. We are trying to compare equally, and all we are doing is taking the base hourly rate for the tradespeople-

 $\underline{\text{Mr. Charlton}}$ : In the tradesman's case, the base hourly rate includes his extra benefits.

Mr. Thomson: No.

Mr. Charlton: Where else do they come from?

Mr. Thomson: You start out with a chart, and it shows--I will pass it along if you want.

Interjection: Show him the chart.

Mr. Thomson: That shows an hourly rate of \$19.13, and then all these are added to get an employer cost. We simply work that out times so many hours a week times a year. That is a bare hourly rate and we compare it--



- Mr. Charlton: You are still not answering my question. There is nothing here that deals with the things I am asking about. Those are the same things you have here.
- Ms. Humphrey: But in the case of the receptionist, we have not included anything other than base salary either.
- Mr. Charlton: Yes, but her base salary does not include her insurance package; it is here as a separate item.
  - Ms. Humphrey: Neither does his.
- Mr. Charlton: Yes, it does, because the employer does not provide an insurance package. In some construction trades they get their insurance package through their union, and in some cases they are buying it on their own out of their net pay.
- Mr. Thomson: But we are talking about straight unionized people to whom we provide those moneys for every hour worked.
- Mr. Charlton: No. If I go in and negotiate a base rate salary that is higher because I have to purchase some of my benefits on my own, not through the employer but out there in the real world, and your salaried person gets that benefit or at least part of it from the employer, that is all part of what you have to take into account in a compensation package.
- $\underline{\text{Mr. Thomson}}$ : Okay. But when we looked at the legislation, we were not clear what compensation meant, and we took straight base rate in the comparison.
- Mr. Charlton: That is a fair comment. All I am suggesting to you is that in what you have done here, you have maximized the gap between the salaried employees and the hourly rated employees, because the hourly rated employees have negotiated extra dollars for some of the benefits they have to purchase on their own.
- $\underline{\text{Mr. Thomson}}$ : I think the gap would be greater if we were to include everything, because I believe that if we included the pension and the welfare moneys, we would increase the gap.
- Ms. Humphrey: That is correct. The gap would in fact be wider if we included all these things down here.
- Mr. Charlton: Let us do that and see what the real gap is, instead of doing part of it and not all of it.
- Ms. Martens: If I can just make some clarifying comments, we tried to reduce it to as much of a common denominator as we possibly could.
  - Mr. Charlton: Yes, but you have not done that.
- Ms. Martens: We have. What we did first was reduce it down to 36.5 hours, so we would at least be comparing the same time base. Second, although you are resisting this, there is a chart that identifies exact numbers, and I would be quite happy to let you look at that.
  - Mr. Charlton: I would love to.



Ms. Martens: I think that is what he is trying to show, that the calculations we used were based on the barebones hourly rate, to which was added an additional \$3 or \$4, from which he then purchased his benefits package.

Mr. Charlton: They are the same figures we have here.

Ms. Martens: The office staff do not have any OHIP or health and welfare benefits. If they get it, they have to buy it themselves; the employer does not make that contribution.

Mr. Charlton: Understood.

Ms. Martens: We tried to eliminate all these variables and bring it down to a common denominator.

Mr. Charlton: But you have not understood the fact that in the case of the tradesman, there are benefits included in his base rate, and you have not made any deductions for that.

Ms. Martens: Yes, we did.

Mr. Charlton: No.

Ms. Martens: We can say "Yes." We are not arguing about it.

Mr. Thomson: His base rate includes no benefits. A union carpenter gets all his benefits on top of the base rate. I cannot say it any clearer.

 $\underline{\text{Mr. Charlton}}$ : You are telling me a union carpenter has no extended medical coverage or life insurance.

Mr. Thomson: Yes, he does.

Mr. Charlton: Where is it in the stuff you showed me?

Mr. Thomson: It is in those additional welfare and pension moneys the employer pays into those plans. He gets them on top of his base hourly rate, which we compared with what was the base rate for the receptionist. It is a straight comparison: apples and apples. We did it at that level to be as simple as possible.

Mr. Charlton: That is not what I understand from the construction tradespeople I deal with.

 $\underline{\text{Mr. Thomson:}}$  We can go and have a discussion with all the boys in Hamilton; they get those on top of their base hourly rate.

Mr. Charlton: As I said, that is not what I understand from those I deal with.

Mr. Thomson: The package is somewhere around \$3 more for those benefits, but they are separate. They are all paid; he does not worry about those, so you do not include them when you compare them with the office worker's.

Mr. Charlton: I know, for example, that some of the construction trades, as you have here, have a pension to which the employer contributes; others have none. Am I not correct?



Mr. Chairman: Mr. Thomson, could I ask you to move forward a little bit? Hansard is having difficulty picking you up. Before you respond, I recognize the exchange that is going on, and I would not like to take away from the interesting exchange, but I wonder whether each of you could wait until the other finishes a sentence before you respond. Hansard is picking up two voices. I want to make sure everything that is said is very clear to the rest of us, who read Hansard late at night when we have nothing else to do.

 $\underline{\text{Mr. Charlton}}$ : Obviously, we are not going to resolve the issue here. I will take it upon myself to table some additional information from the construction trades on the question of benefits.

Mr. Chairman: Fine. Mr. Thomson, you were going to respond to a question, and I interrupted you. Please go ahead.

Mr. Thomson: I think we have covered it. We all work off the same collective agreement, and I am sure if we look at it, we can resolve any difficulties. I think we compared apples and apples, and that is what we wanted to do.

Mr. Baetz: If our colleague Mr. Charlton is going to provide the committee with some additional clarification—and I put quotes around that—I would like to be assured that the Council of Ontario Construction Associations gets that and then has a chance to elaborate on it. In fairness to our delegation, the chairman ought to promise it that.

 $\underline{\text{Mr. Chairman:}}$  The chairman is always most anxious to accommodate. I have no problem with that.

Mr. Baetz: Thank you; I knew you would not -- or you would.

Mr. Chairman: I am always anxious to accommodate. Further questions?

 $\underline{\text{Mr. Baetz}}$ : I do not claim to be an expert in this, but I felt the explanation was informative and educational. I thank the delegation very much for having clarified this, from my point of view.

Mr. Stevenson: Did I understand you to say that when you went to the company in question, you interviewed the workers and the management to try to get some basis of understanding for what each job meant and how you would use the characteristics of each job in your evaluation?

Ms. Martens: I went out to the construction company and interviewed three of the incumbents. I got information on the other jobs from the president. There are detailed descriptions of the jobs at the back under appendix A--they would also make good night-time reading--where we have outlined the major job responsibilities. We have broken the job down under those 14 subfactors, describing the nature and the degree of difficulty under each one of those subfactors. Anybody here can actually refer to the job descriptions himself and read those; they are quite detailed.

Mr. Stevenson: As a consultant, would you ever take written job descriptions from management and use those job descriptions in your evaluation, or would you always visit and interview some of the workers?

Ms. Martens: Visiting and interviewing is time-consuming and time is money, so it is up to the client himself to decide whether he wants to pay for a consultant's time to go out, audit the job, interview the people and write



up the descriptions, or whether the client himself, through his facilities, is able to do it, either with the assistance of a questionnaire or because he feels he knows how to collect job information. It depends, it varies.

I prefer to work from job descriptions that I myself have written because I am then much more familiar with the jobs, but the other approach is used quite frequently.

Mr. Stevenson: Could you give me a ball-park figure on what it might cost to get a job like this done for a company that had, say, 30 to 40 employees?

Ms. Martens: Do you want to hire us?

Mr. Chairman: I am sorry, I did not hear a number.

Mr. Stevenson: I am rather curious.

Ms. Martens: Subject to negotiation, I can assure you that a--

Mr. Chairman: You cannot provide us with a high and low? Nothing like that might be available?

Ms. Martens: No, I cannot. It is too difficult. If you start writing job descriptions, it depends how many people you have on the assignment. You could have two or three if it was a major situation. There is a wonderful system that we have that would probably cost you \$200,000 if you wanted to implement it in a large company. On the other hand, it could be anywhere from \$2,000 to \$3,000 for a very small company. That is your ball-park figure.

Mr. Chairman: Mr. Frame, to word the question of Mr. Stevenson another way, would you be averse to sharing with us the cost of this study?

Mr. Frame: No, not at all, but I have not seen the bill yet.

 $\underline{\text{Mr. Chairman:}}$  We are not getting anywhere with this line of questioning.

Mr. Ward: Badgering the witness.

Mr. Chairman: We are not badgering the witness at all. We are trying different ways to get an estimate of the cost.

Ms. Martens: Let us put it this way: I think I am underpaid.

Mr. Chairman: To whom would you like to compare yourself?

Ms. Martens: The carpenters out there are wonderful.

Mr. Baetz: If you were a male, would you be paid more?

Ms. Martens: I hope not.

Mr. Baetz: On the point you made about the incumbency, where there is only one and it happens that, at the time of the survey or the study, that person happens to be a male. It could have been a female before. That, as you have pointed out, could skew the study somewhat.



Would it be valid in situations such as that—and I suppose there are quite a few—to take a look at the last five, seven or X years to see whether it has been male or female, predominantly female or predominantly male? Or would it be possible to cluster this with other construction companies where there is only one position? In other words, a similar job in a different company would be compared in order to determine whether, in fact, this is a predominantly male or female job that we are talking about. Is that a valid way to go at it? Maybe there is something in the legislation that would even permit it, I do not know.

Ms. Martens: I think everything is valid up until it is tested in the courts and found to be either possible or not possible. I have always been tempted to take an argument saying that, for this particular company, it achieved pay equity five years ago and everything that you see now is as a result of differences in bargaining strength. It is possible that one could make an argument such as that, but it is quite equally likely to have very strong counter-arguments on that.

One of the things that you get into is what is an establishment. If you start looking at cross-industry comparisons, then you really have to say that these different companies located in different cities and towns are suddenly going to be considered one establishment. I do not think the legislation wants to lump a whole group of people all together like that. There are difficulties in taking that particular approach.

# 1450

In this case, the office manager-accountant tends to be male in most construction companies. This company has been farsighted and progressive, in fact hired a female when the male left and is now finding itself in the situation where, if the legislation passes they way it is right now, it is going to have to increase its salaries. Other companies that were, let us say, dragging their feet more in terms of giving women opportunities will not have to make those kinds of wage adjustments.

That is where, from a personal point of view, I find the legislation difficult. I see all the positive inroads that have been made with employment equity and with trying to move women into nontraditional areas being eroded by legislation that really turns the tables on those companies that have been progressive.

Mr. Ward: I have one concern. When your organization was leaving the last meeting you attended, I had a conversation with one of the gentlemen about that particular instance and position you are referring to, the office manager.

Subsection 1(4) of the bill does make provision that due regard will be had for historical incumbency in determining whether that is a female or a male job class. The implication in the exchange that has just taken place is that this legislation could have negative implications with regard to employment equity. I think the very reason subsection 1(4) is in there is to underline that by having regard for historical incumbency, you do not need to make that argument. I cannot understand why that would be determined as a female job class when my understanding is the position in 90 per cent of the firms is, in fact, held by a male.

Ms. Martens: Not quite 90 per cent; I believe it is closer to 60-40.



Mr. Ward: That is the only point I wanted to make. There is a historical incumbency clause in the legislation.

Ms. Martens: There is a possibility of making that argument. Whether or not it would be accepted is a different thing. That might fix the 25 per cent increase for the office manager, but we are still left with a situation where a receptionist-typist would have to get a 66 per cent increase and be paid \$32,000 a year.

The additional problem here is that if the receptionist-typist were to have, let us say, more complex job responsibilities added in order to strengthen that job and make it more difficult so that it would evaluate out at a higher level than the labourer, the way the legislation currently stands, the receptionist-typist would still have to be equated to the labourer's salary, because subsection 5(2) says that if jobs are evaluated at lower levels but get paid more, then this pay equation has to be made. So there are still difficulties with the precise pieces of the legislation.

Ms. Gigantes: I am concerned about our time, because we are going to run out of time for all the things we have scheduled this afternoon.

Mr. Chairman: I have a number of members who are interested in asking questions. If Mr. Ward has finished, we will go to Mr. Stevenson.

Mr. Stevenson: I will try to be brief. When this company hired the woman in the job of office manager or whatever it was, was that person paid at roughly the same rate as the man who held the position prior to that?

Ms. Martens: I wish you had not asked that. The simple answer is no. I asked the same kind of question, "Why not?" In terms of looking at the job, the previous position had to do all the financial statements; prepare all the financial statements that get tabled with the company year-ends and so on. The job now has been reduced in the sense that the person takes it up to trial balance but the rest of it is done externally. So there was a reduction in terms of the complexity of the job, with a comparable slight reduction in terms of salary.

Mr. Stevenson: Are you consulting now for any companies that are evaluating all jobs in the company with no sort of gender predominance being involved in the rating system?

Ms. Martens: Yes.

Mr. Stevenson: Many?

Ms. Martens: You are asking a difficult question, because I joined the consulting company about two months ago. Before that, I was doing various other things.

I know that we do have different types of systems that can be applied. What we would normally do--and actually this is the process that was followed by the Ontario government as well--is take an occupational group at a time, see what kind of segments you have, build your evaluation structure on those occupational groups and then link them in together.

There are, let us say, generic plans that one sort of puts on top and they work as well, but the normal approach would be to gear the evaluation system to meet the specific requirements of a company.



For instance, there are some that are very market oriented. They have no particular system at all and yet they may have 1,000 people working for them. It is a straight market-to-market kind of job or wage allocation. In that case, it is extremely important for them to fit right in and be competitive. You have other companies that have very large, monolithic value systems of their own, where they can afford to be above, below or whatever. It really depends on the different natures of the organizations.

Mr. Chairman: With regret, we are going to have to conclude at this point because we have other matters for the committee to discuss. On behalf of the committee, I want to thank you for coming back, particularly Mr. Frame, the construction association and yourself, Ms. Martens. We appreciate the additional information you have provided us with.

I assure you that I will share the information, as Mr. Baetz has suggested, that Mr. Charlton is providing us with. We will make sure you are kept apprised of this ongoing debate that Mr. Thomson had with his good friend and colleague Mr. Charlton. I found it most interesting and cannot wait to see how Hansard prints words on top of words. That will be an interesting part to take a look at.

Thank you again.

Mr. Frame: Thank you very much for the interest you have shown to ask us back to explain our study further.

Mr. Chairman: Not at all. It was our pleasure.

Mr. Chairman: The next item on the agenda is the film.

Ms. Gigantes: Mr. Chairman, I have a problem. I raised questions about the agenda yesterday. I have made reservations to fly, which means that I have to leave this building at 4:15. We are not going to be able to do all the work that you suggested would be done today. I have seen the film.

Ms. Caplan: Are you a member of the subcommittee?

Ms. Gigantes: Yes.

Ms. Caplan: Could I suggest that the subcommittee meet now and that we then reconvene to view the film at the time the subcommittee is finished? I know Ms. Gigantes has seen the film already. Those of us who have not can come back when the subcommittee has finished meeting.

Mr. Chairman: I have no difficulty with that. I did it in the reverse so that the members of the regular committee would not be tied up.

Ms. Gigantes: Yes, that is right.

Mr. Chairman: We can see the film, and then those members could be--

Ms. Gigantes: How long will our subcommittee meeting go? Do you believe it will go an hour?

Mr. Chairman: I do not think it is necessary to go an hour. Are we in a position to share the agenda with all the members of the subcommittee? How be I announce the agenda quickly?



I have questions like whether you want a general walk through the bill before clause-by-clause, the scheduling of statements on the part of the parliamentary assistant and the two critics and whether you want to handle the review of written submissions in a formal or in an informal way. In other words, do you want to walk through the submissions? We have about 60 written submissions. I am sure you have read them all. If you have not, how do you want to handle that?

There is the tabling of amendments and the sitting times and days for the weeks of March 30 and April 6, particularly as they relate to the interruptions we are going to have. The Liberal Party has a caucus meeting at five o'clock on March 31, which is probably the least complicated for our purposes. That may not interfere with us at all. The Conservative Party, however, is having a caucus meeting on April 2 and April 3. The New Democratic Party is having a caucus meeting on April 9 and April 10. As we normally do, we have to find a way to accommodate the parties.

We also have the question of the payment of expenses for the one out-of-town person. We had discussed that in the past.

The seventh item is the issue of the Canadian Union of Public Employees, Local 2424. It has a videocassette, called Pay Equity Forum, of a forum at Carleton University. We have that if the committee wants to see part of that forum.

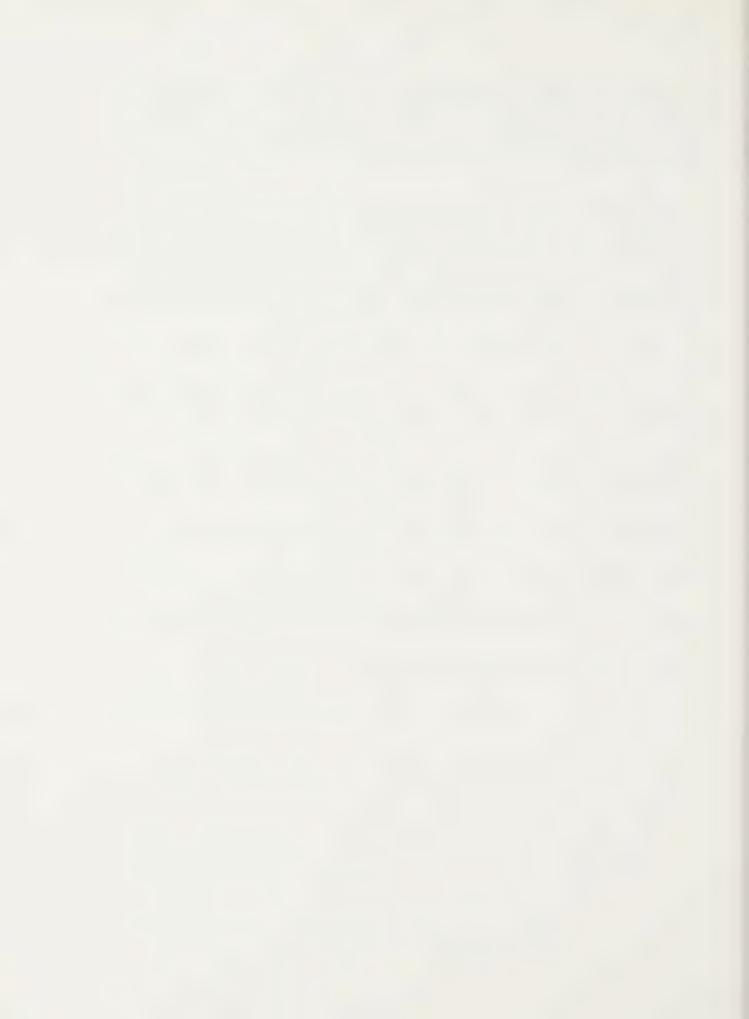
Those are the things. I think we can do them. They are fairly routine. I would say half an hour can do it. If the film is half an hour, I will make every effort to get you out of here--

 $\underline{\text{Ms. Gigarites:}}$  Mr. Charlton might be able to substitute for me if I have to leave.

Ms. Caplan: Did you want to go first?

Mr. Chairman: Is there any objection to the members of the committee being able to smoke during this informal part? There being none, we will allow smoking.

The committee viewed a film at 3:02 p.m.



Publications
J-70

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
MONDAY, MARCH 30, 1987
Morning Sitting



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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O'Connor, T. P. (Oakville PC) Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

## Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Deputy Senior Legislative Counsel (French)

Evans, C. A., Research Officer, Legislative Research Service

#### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Office responsible for Women's Issues:

Marlatt. J., Director, Consultative Services Branch, Ontario Women's Directorate

### LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, March 30, 1987

The committee met at 10:23 a.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good morning, members of the committee. I recognize a quorum of the standing committee on administration of justice. Our discussions this morning will be on the beginning of clause-by-clause debate on Bill 154. I have a few very brief opening comments with respect to how we proceed from this point. I think there would be some value in the committee's having some discussion this morning on the procedure it wishes to follow with respect to the bill.

I should mention, for the purposes of committee information, that I have tabled with the committee the amendments we have received; namely, the government amendments and the New Democratic Party amendments. I have not as yet received the Conservative Party amendments, and a spokesman from that party may wish to speak to that point when we get into discussion.

There is also some concern being raised on the part of both the other parties I identified about the limited amount of time most of you have had to review the amendments that have been tabled to this point. If you wish additional time to look at those, we can discuss that as well, again from a procedural standpoint.

This morning I am primarily interested in determining how the committee wishes to move from this point on and the position of the respective parties in that connection. I am open to committee discussion now.

Ms. Gigantes: I would like to put a proposal before the committee which I think may help us in dealing with the bill and the various amendments; that is, that we try to direct our attention to the bill in terms of various items, principles or subject matters within the bill. If we do that and tackle one item at a time, the rest will more or less fall out of that. In that sense, we would be discussing the principles or standards we want in the legislation, and we could pick up the amendments that deal with those areas, each area by itself.

If the committee were willing, I would like to propose that we begin with a discussion of the coverage of the bill; in other words, how many women and which women would receive coverage under this legislation. Once we have had a discussion of that and amendments on that subject, we would then proceed to the question of timing, apropos when the legislation would come into effect for women, and then move to the creation of plans as specified in the bill. I discussed this briefly with people from the other parties and there seems to be some willingness to proceed this way. I think it would probably facilitate our work.

Mr. Chairman: From the standpoint of the chair, there is a great deal of merit in what you say. There are a number of amendments that I have reviewed to date that flow out of a fundamental principle. Having once established that principle, the other amendments flow in a virtually automatic sense, so there is some value in packaging the philosophical thrust of a given party with respect to a particular section. If the committee is in agreement with this, the chair will allow a reasonable amount of latitude in terms of the debate so that members can discuss a more comprehensive group of amendments that may be related to that specific item. If I am interpreting what you are saying correctly, I would be most pleased to proceed in that fashion.

Ms. Fish: Perhaps I could do two things: first, similarly indicate a willingness to proceed in that fashion and, second, extend my apologies to you, the clerk and colleagues on committee. The final materials on amendments I had asked to be drafted by a legislative counsel have come in only this morning. Some of the materials were available last week, and I wanted the opportunity simply to go through them in a final way before they were tabled. However, in several of these areas I certainly would be in a position to speak in a general term, with the caveat that perhaps by this afternoon we would be able to bring forward some of the specific wording that is appropriate if we were at that point in the clauses.

Mr. Chairman: Any further comment? There are no staff comments. I have checked with the parliamentary assistant and his staff, so I believe we can proceed at this point. Ms. Gigantes proposed that we follow a particular order. Does that imply that you want to start the discussion, Ms. Gigantes?

Ms. Gigantes: I would be delighted to do that. I am going to avail myself of this chart in order to lay out some of the concerns I have in a kind of numerical overview, if I may, and talk about why I think we need amendments to Bill 154 in terms of what we know about women who work in Ontario.

### 1030

I am going to do a general overview of what we are looking at here. We have about two million women who are working in Ontario. We know that about 22 per cent of them are in organized work places. In other words, they belong to trade unions. That amounts to about 440,000 women who are in unionized positions. Of the two million, we know that the public service component—and I put this in just for a matter of reference at this stage—is about 29,000 women. We know that in the broad public sector, what we like to call the full public sector, there are about 350,000 women. This is a guess, but it is probably about the best guess one can make at this stage.

Most of those women are organized—I should put it the other way around: Most of the women who are in unionized positions in Ontario are actually in public sector or public service positions, which means that of the 440,000 women who are members of trade unions in Ontario, about 60,000 are in the private sector. These figures are really kind of background to the discussion I would like to raise about the bill. This means that about five per cent of the private sector is unionized as far as women are concerned.

When we look at the private sector, we are talking about women who work mainly without being members of trade unions and who do not have the protections that come with being in trade unions. That means we have about 1,720,000 women—these are very rough figures—who are not public service and not public sector. That is just a backdrop for the things I think we should bear in mind when we are looking at Bill 154.

The other things we know about the female labour force in Ontario are as follows: We know that of the two million women, about one quarter, or 500,000, are part-time workers. We also know that in the private sector there are about 400,000 women who work in firms that employ fewer than 10 people. We are getting close now to the questions that surround the way the bill sets out the legislation.

Let us take these 500,000 women who work part-time and assume that one way or another employers are going to be able to find exemptions under the existing legislation for those 500,000 women. I will give you an example. If I am an employer who employs three part-time workers, and those part-time workers are working, say, 40 per cent of normal work hours now, as a clever employer—in order to escape the provisions of the legislation, which say that I have to provide equal pay, or the application of the bill will be to part-time workers who work more than one third of normal work hours—what I can do is hire another part-time worker and make sure all my part-time workers work less than one third of normal working hours. I think there is potential within the exemptions in section 7 of the legislation so that employers could find a way to make sure that some very large portion of these 500,000 women would not be included in the provisions of the legislation.

If we say that all these women are going to be exempted by the way the employers use the exemptions in section 7 and that all these women in firms of fewer than 10 employees are going to be exempted, we are starting to talk about a very large portion of the female employment in Ontario.

Again, I want to point out that these are gross figures. There may be some overlap between those employees who work in firms of less than 10 employees and those employees who can be considered part-time under the legislation, but I think, in all fairness and in a reasonable approach to looking at what we are talking about in terms of coverage, we have to say to ourselves it is possible that under this legislation somewhere up to 900,000 women might be excluded by the exemptions built into the bill in terms of a firm that employs fewer than 10 employees or a firm that uses a large percentage of part-time workers.

If we take that as an outside estimate of the effect of the exemptions that exist now in Bill 154, we have to look at two further stages. One is the situation where there is no male comparable. That means we have a group of female employees in a firm or an organization, and while we know they are doing women's work, for example, in a nursing home or a day care setting, there may be no reasonable male comparison for their work within that organization or firm.

We do not know how many women that will be. As it is now, the legislation does not deal directly with that problem, though the minister has said he will request the equal pay commission to make some decision on how situations of no male comparables will be dealt with. We do not know how many women that will be, but it will be in the range of several tens of thousands; that we can guess.

There is a further test that goes on within the bill that everyone will be familiar with, and that is the test of 60 per cent female predominance and 70 per cent male predominance. Again, we can think of a number of situations where this test will mean that, while women are doing women's work and they find their work is undervalued, and anybody could look at the situation in a particular work place in a commonsense way and say, "Definitely this group of workers is doing female work and that work has traditionally been

undervalued," if there is only 55 per cent female occupancy of those positions at this point, there will not be a basis for comparison under the test that is set out in the bill, because the test in the bill is that there has to be 60 per cent or more female occupancy in the female-predominant group.

There is a further test. Even if we have 60 per cent female occupancy or more in a typically female occupation in a firm, the bill also says the comparisons of the value to the employer of that female work have to be made to a group of positions which is occupied at the level of 70 per cent or more by males.

It is easy to see that if we have 56 per cent occupancy in a group that is doing clerical work and perhaps that should be compared, say, to a group that has 65 per cent occupancy of male workers, the bill says essentially that we cannot make that comparison. Within some work places, that may effectively rule out the mechanisms of this legislation as it is before us in Bill 154.

# 1040

Just to recap, the reason I am looking for amendments in coverage in this legislation is that in terms of the exemptions, particularly the part-time exemptions and the red-circling exemptions, which I have not gone into, and also the exemption for private work places where there are fewer than 10 employees, we are talking about hundreds of thousands of women who potentially can be left out of the coverage of this legislation. Where there is no male comparable, we have nothing in the legislation which assists the women in that situation right now and we would need an amendment to put into legislative effect the commitment the minister has given us on that situation.

Further, the test of a 60 and 70 per cent predominance comparison is one which will rule out the effectiveness of this legislation for both men and women who are in typically female work. It is for those reasons we are looking for an amendment.

I think you can see by the numbers involved here that we are not talking about amendments which have minor effect. These are amendments which can mean the legislation has a real impact on the work lives of women in Ontario and of men who are doing typically female labour, or is legislation which effectively leaves them out.

For these reasons, we would propose to address the problem, as I see it, of coverage by dealing with amendments to section 17, which establishes an exemption for places of employment where there are fewer than 10.

We would seek to change section 7, which lists a number of exemptions, in terms of the employer's responsibility to apply this legislation within the work place.

We would like to see the no-male-comparable situation dealt with specifically in the legislation, and we would propose a new subsection 12(5) to do that.

We would like to get rid of the 60-70 per cent test of comparability of male- and female-predominant positions. We would deal with that by getting rid of the current section 5 for a new section 5 which really does not address the question of percentage and ratio comparisons but which looks to the achievement of equal pay instead.

Mr. Chairman, from here I am happy to move to questions and general discussion. I can then proceed to move motions at the time you and the committee feel it would be most useful.

Mr. Chairman: All right. We are still in the area of procedural discussion as to how we move. Ms. Gigantes has taken part of her time to discuss the New Democratic Party's position with respect to some amendments that she proposes to bring foward. I will now look to the other parties for any comment at this time.

Mr. Barlow: Mr. Chairman, I just wonder --

Mr. Chairman: Questions are in order, if you wish to ask them of another member, but do it through the chair, please.

Mr. Barlow: Mr. Chairman, do you have a copy of these amendments Ms. Gigantes is proposing?

Mr. Chairman: Yes.

Mr. Barlow: They have been submitted. These amendments would expand substantially the existing bill, as it is written.

First, I must apologize for not having been in on the previous deliberations. I was on another committee so I was unable to sit in on the deliberations or hear the various submissions, but I have certainly read a good number of them to know what the feeling is with the different jurisdictions that will be affected by this.

It is a comment, really, more than a question. To expand it to that extent would virtually handcuff every employer in the province without any opportunity to respond other than through the equity plan. I have a real concern about expanding that as far as you have suggested and I would have to be convinced that is the route to go. I do not know if any of my colleagues have taken the time to think this one through, but I have problems with it, right now anyway.

Ms. Gigantes: Mr. Chairman, if I could respond, I think the concern I am trying to outline in terms of the approach that we are proposing here is one where we know we have two million women at work and 500,000 of them are part-time and may be removed from the aegis of this bill by the exemptions under section 7.

We also know that about 400,000 women are working in firms with fewer than 10 employees--actually, the figure is closer to 300,000 in firms with fewer than 10 employees. What I have done is thrown in an extra several thousand for the situation that we cannot specifically identify in terms of numbers. That is really incorrect--I should put up 300,000 here. What I have done is added in roughly another 100,000 as a guesstimate of the number of--

Mr. Chairman: Ms. Gigantes, could you use the mike, please. We are having difficulty picking you up.

Ms. Gigantes: I am correcting this figure, Mr. Chairman. This should be 300,000 roughly. It is over 300,000, but in any case, I have thrown in an extra 100,000--and you can question that figure--for the number of women who may not be covered by the legislation because there is no male comparable involved in their work place, or for the number of women who will be left out

when common sense would tell us that they should be included for purposes of comparison of their wages within the aegis of this legislation but may be left out because they do not work in groups that are 60 per cent female predominant or cannot be compared to groups within that work place that are 70 per cent male predominant.

It is the concern about the fact that out of a work force of two million in Ontario, we are dealing with hundreds of thousands of women who may not be able to benefit at all from this legislation. It is out of that concern that we are addressing the question of coverage. While you say it may greatly increase the scope of this legislation, I agree with you that it will, but that is my purpose. Surely it is our purpose here to try to make sure that wherever women have been unfairly treated in terms of their specific place of employment, considering the value of the work they do, we want to see that addressed.

You raise the other question that, for example, to suggest firms with fewer than 10 employees now, after the hearings have closed, is to suggest a new concept. In fact, that concept was raised time and again throughout the hearings and we had many employer groups come to us and suggest all places of employment with 20 or fewer employees or 50 or fewer employees. We had lots of suggestions around that specific amendment and, certainly, we had scads of presentations by women's groups and organized labour suggesting to us that we should provide coverage for places of employment with fewer than 10.

It is the overall impact of this legislation, I think, that we need to address when we look at the coverage.

Mr. Barlow: Mr. Chairman, are there any other jurisdictions that you can point to in Canada, the United States or elsewhere that would have such a broad-brush approach as what you are suggesting?

Ms. Gigantes: I think this could probably be answered better by our research staff, but my understanding is that, certainly, Britain has. I do not know the specifics of the legislation.

Mr. Barlow: Mr. Chairman, can anybody answer that?

Mr. Chairman: Do any of the research staff wish to comment in terms of the broad bill as proposed to be amended by Ms. Gigantes and in response to Mr. Barlow's question?

Ms. Marlatt: I think the federal legislation and the Quebec legislation would cover all public and private sector employees under their jurisdiction, without any size exclusion.

# 1050

Mr. Chairman: Excuse me, did you say all other than private sector?

Ms. Marlatt: No, public and private sector, without any size exclusion. Quebec, the provincially covered employees under provincial labour legislation, much as we are talking about here; federally, as the federally regulated employees.

Mr. Barlow: Which are? The ones that have contracts with the federal government? Is that right?

Ms. Marlatt: No. They are covered by federal labour legislation, such as banks, transportation companies, Bell Canada.

Mr. Barlow: How are those regulations enforced?

Ms. Gigantes: By complaint.

Mr. Barlow: What does the federal government have? Do they have a commission that deals with that exclusively?

Ms. Gigantes: The Canadian Human Rights Commission.

Mr. Barlow: So it is dealt with under the existing human rights commission?

Ms. Gigantes: Yes. The difference between this legislation as it exists now and the Quebec legislation or the federal legislation is that it provides only for complaint enforcement. It does not provide for the creation of equal pay plans. That is the difference in the nature of the legislation that we are looking at. However, when we look at Bill 154, there are no plans required for employers in the private sector who have fewer than 100 employees. If we leave that matter aside and say that for firms in the private sector which employ more than 100 employees there must be a plan, but for ones that employ fewer than 100 employees there does not have to be a plan, effectively what we are saying is that the legislation will be enforced the same way for all private sector firms which have fewer than 100 employees as both the federal legislation and the Quebec legislation, which are only complaint-enforcement mechanisms.

Mr. Ward: I have a question with regard to the 500,000 figure for part-time. I take it you are extrapolating that from a percentage of the total work force estimated to be part-time, at 25 per cent.

Ms. Gigantes: These are figures that I had. I do not have the figures with me. I would be glad to provide them. I had them on written request to the Ministry of Labour back in December.

Mr. Ward: We have the Statistics Canada labour force survey. Again, I am having a lot of trouble seeing the correlation between that and the numbers you are putting forward. First, with regard to the part-time, I think you are making an assumption that all part-time employees are excluded from the coverage, whereas subsection 7(4) says, "A position shall not be designated under subsection 3"--which is a casual exemption--"if...(c) the work is performed on a regular and continuing basis, although for less than one third of the normal work period."

Ms. Gigantes: Yes. What I see, though, under that section is a way for people who engage a large number of part-time employees or who in fact do not now engage a large number of part-time employees, to start into the business of qualifying their place of employment for exemption under this legislation, by employing people on casual on-call.

Mr. Ward: You think that is going to happen to the 500,000 part-time workers in Ontario?

Ms. Gigantes: It certainly is an incentive to employers, there is no doubt about that. If I were an employer, I would be crazy not to try to think about how I could qualify for that exemption. We have other exemptions in

section 7 that deal with red-circling and merit systems, and they are of concern too, but I think the largest concern has to be the part-time, casual, on-call element in that exemption. As I said before, there may well be overlap between that 500,000 and the 300,000 who work in firms with fewer than 10 employees.

Mr. Ward: The 238,000, according to the 1985 Statscan labour survey of firms of 10 and under, includes part-time as well, but your point is it is not that the legislation does not cover the part-time workers; your point is that you believe they will no longer be part-time workers.

Ms. Gigantes: I believe that employers will be looking to qualify their place of employment and the positions they fill by using the exemption in section 7.

Mr. Ward: I think there is an important difference, though, in terms of the point that you are making as to whether or not you concede that the bill does cover these part-time workers. That is not the issue. The issue is that you believe the mechanism should be put in place to effect that.

Ms. Gigantes: You are correct. I think, though, when we look at the issue of coverage, we have to be pretty hard-nosed about what we expect it is going to do for women. If we are allowing an exemption which is going to create an incentive for employers to avoid having to deal with this legislation, then I think we can safely predict employers will use that incentive.

Mr. Ward: What was your estimate with regard to the gender predominance?

Ms. Gigantes: I have not made an estimate. What I have done is try to add up what I would guess might be a reasonable estimate of how many women would be in a situation where there was no male comparable in the work place.

Mr. Ward: Which I think we all have agreed we are going to try to address through this process.

Ms. Gigantes: I have tried also to make a guesstimate of how many women might be doing typical female work, but in a group which either had a large component of male workers or where there was no easy comparable within that place of employment with a male-dominated group, dominant to the extent of 70 per cent.

Mr. Ward: On that point, subsection 1(4) makes reference to the fact that due regard shall be had to the historical incumbency, so the example that you use of someone being in a situation that would be typically or traditionally deemed to be a female job class, even if it did not meet that 60 or 70 per cent figure, the potential is available for coverage through two mechanisms, either in the opinion of a review officer throughout the process or in a unionized setting. That is a negotiable aspect.

Ms. Gigantes: My point is, when we had representations before us, both from people in unionized work places, for example the staff of York University, and also from labour organizations, they indicated to us that they felt the job of a union in trying to negotiate out of that kind of situation was strictly a barrier to the application of this legislation in areas where it should be applied, where we would expect it to be applied. We had examples given to us which were real examples, both from the Equal Pay Coalition which

involved the city of Toronto as a work place and from the York University staff where the change in the incumbency of one or two positions would affect whether one had to get into a prolonged debate about the historical incumbency of a group of positions. I see no good reason why we should have that test.

If, indeed, every time we get close to the border line on that test we are going to have great big struggles either in the work place or through a review officer determination in the field and so on, then have we made the application of this legislation as effective as we want to make it? The beauty of the 60 and 70 per cent test has been pointed out many times, especially by Mr. Polsinelli, who says what it means is that you get a measure of whether there is discrimination based on the female incumbency of positions. That is one way of testing. The other way of testing is simply to compare jobs and the value of jobs to that employer.

Mr. Ward: I guess this is not the moment at which we are dealing with specifics of any proposal as it relates to this.

Ms. Gigantes: I have motions that I would be pleased to place.

## 1100

Mr. Ward: Perhaps some of this debate should be saved until that time, but I do want to reiterate the point that there are mechanisms to address certain aspects of those two elements of your argument. Also, I do not think we should lose sight of the fact, when we make reference to other jurisdictions and other mechanisms, that we have due regard to the fact that this is legislation that was designed to be implemented not only on a complaint-based system but also proactively. I think that is the fundamental difference between this and a lot of other jurisdictions, which again have saved those specifics for there.

Ms. Gigantes: Yes, but when we say we are not even going to allow a woman who works in a place of employment of fewer than 10 employees to lay a complaint, we have not done as much as or more than Quebec or federal legislation; we have done less.

Mr. Baetz: I would like to have Ms. Gigantes elaborate somewhat more on the 60 per cent female and 70 per cent male and the exclusion of that. I want to stress that I am not arguing with it at this point. I am neither for nor against it. What I would like to get is some further elaboration on it.

The thing I am vague on and that I hope she will shed some light on is that if you remove any required percentage of female and male, you are really removing the gender comparison; you are simply saying. "Compare positions with positions." If you do that, are you not then catapulting this whole legislation out into a vastly different sphere that goes far beyond differences and discrimination on the basis of gender? I wish you would elaborate on that point.

Ms. Gigantes: Let me give you an example at the federal level, which I think may speak to some of your questions on this subject. There was a case undertaken, and if my recollection is correct it was about six years ago, at the Public Archives of Canada in which women who were hired as librarian researchers sought to have their work and pay levels compared to a male-predominant group called archivists.

The comparison was made under the human rights legislation at the federal level. It took years. There was no plan laid out in the archives, but

when the comparison was made, those men who were employed as librarian researchers also received the benefit of the comparison, which amounted to several thousand dollars; it was around \$4,000 or \$5,000.

There are men who are engaged in positions that are traditionally female work and categorized in a different way from positions that are typically occupied by males. We know that increasingly has been the case. Does it mean we have not dealt with sex discrimination if some men in that job group receive the benefit of a comparison in terms of the value of their work and the pay levels they receive? It does not. It means those men have been employed doing a job that has traditionally been done by women and valued at a lower level than another position that has traditionally been occupied by men.

We are not suggesting this legislation does not deal with gender discrimination; it does. That is what we are talking about. But there will be men working in some of those groups who are also being discriminated against because of the title and the history of incumbency of the position.

You can say, and it has been said, that to say we have to have at least 60 per cent female occupancy compared to at least 70 per cent male occupancy is a very good test of whether there is sex discrimination going on, but I do not think it is an adequate test. If it is a test that we set up which is going to have to be fought about in terms of the implementation of this legislation, why are we doing it? Why do we not say to each place of employment, each employer and the employees in that place of employment: "Do you think you have problems? Where are the problems? If you are employing more than 100 people, let us see a plan to deal with that. If there are fewer than 100 people, let us have a complaint mechanism open so that at least the matter can be investigated."

Mr. Baetz: Taking the example of the librarians and the archivists, as you point out, there has been a difference between those two positions, and maybe that is not the best example. But if you remove the predominance of females or males, the reason for the difference could be something quite different; it could be based on God knows what.

Ms. Gigantes: It could, except there is an amazing pattern we have seen in this kind of matter, and we all know the pattern. For example, we know that here at Queen's Park, when we compare the wages of the Queen's Park switchboard operators with the wages of the Queen's Park parking lot attendants, there is a gap, which not only has existed for years but also grows wider every year because the two positions receive general, annual increments on a percentage basis, so the gap gets wider. In fact, that has happened in the last five years here.

We also know that at Queen's Park there are an increasing number of male switchboard operators, and that has happened over the last five years, in my experience when I call up the Queen's Park switchboard.

Is there still 60 per cent female predominance in those categories? The difference in the level of pay between the switchboard operator and the parking lot attendant is clearly a traditional bias. But if at some point only 55 per cent of the operators are female, does that mean we should not look at the value of that job to the employer, compared to the value of the parking lot service to the employer? Of course we should be looking at it. Should there have to be union negotiations around it if they are unionized, which I do not know? Should there have to be an appeal if there has been a traditional occupancy?

Why do we not just say it is obvious to everyone that the reason for that difference in pay is that it used to be always done by women and that is why the pay level is low, because anything women did was not worth as much as what men did?

Mr. Baetz: As I say, I do not want to get into debate here at all, but I still have some doubts on these same questions, and I am more concerned about the methodology and not so much the inclusion or the broadening of the inclusion in the program.

If we remove this formula from the legislation, are we very clear about how we replace it, without getting ourselves into the vast field of differences of values of jobs? That may be something to do with gender but not very much, or certainly not as precisely as the 60 per cent and 70 per cent. I can appreciate your worry about the precise cutoff at 60 per cent and 70 per cent, because somebody can go down to 56 per cent and 65 per cent and so on.

I look forward to your replacement of that formula with something else that will not end up with this legislation looking at the whole business of different values to different jobs, because if you are into that, we are encompassing the universe on this one.

Ms. Gigantes: I do not think there is any attempt to encompass the universe, but I do think each employer and all employees are capable of looking at the place of employment and the duties of various positions, making a comparison and determining whether it is likely that there has been sexual discrimination in terms of the pay levels associated with those positions. Whether there is 60 per cent female predominance or 70 per cent male predominance, in my mind, should not be the first test.

Mr. Ward: You make a lot of references to the difficulties of the 60 per cent and 70 per cent thresholds and the problems of making comparisons. I guess one of the disadvantages of how this process is unfolding is the time we have to look at each other's amendments and to talk in terms of specifics. Looking at your amendments, I do not see where you have even made a provision for comparisons. There are references to equalization base entry rates, comparison of branch plant jobs, a program of job evaluation and increasing minimum wage rates. Where do the job comparisons come in?

## 1110

Ms. Gigantes: Are you looking at our amendment to subsection 12(5)?

Mr. Ward: Subsection 12(1).

Ms. Gigantes: You will notice the wording on that amendment is one which says "include any or all." If you look at clause (b) in that amendment to subsection 12(1), what it is indicating to employers and to employees is that there shall be programs. For places of employment with plans that are designed to achieve equal pay, that may include any or all of the following methods. Obviously, the end test is whether, at the end of the process, you have comparable positions receiving comparable pay levels, but the methods of achieving that can be many and varied.

We had the example over a year ago of Canadian Union of Public Employees hospital workers who, seeking to address the question of equal pay in their employment place, were asking the hospital association to provide comparable base entry rates for male and female positions. That would have got them a

good start down the road in terms of looking for equal pay for comparable positions within their work places.

Mr. Ward: I just wonder how this works in nonunionized private sector work places in a proactive fashion.

Ms. Gigantes: In a proactive fashion, I would see the employers setting out a plan and all the information related to a plan that would enable individual employees or groups of employees to take a look at the information that was provided and make a determination on their own about whether that was going to meet the problems they saw in terms of equal pay within that work place. If they saw a problem with the plans, they would make a complaint and have a review officer investigate.

Mr. Ward: Other than the adjustments that are indicated here, the identification of female and male jobs is strictly through historical incumbency.

Ms. Gigantes: If you, I or the guy on the street were asked how to address the question of equal pay, I think we would sit down, look at a place of employment and ask: What positions have what skill, effort, responsibility and working conditions attached to them? Are they comparable to other positions in that firm in terms of the value of the work?

Mr. Ward: Can you not see that in terms of asking how one establishes a female or male job class--I mean that was the very reason the threshold levels were put in this legislation and in most other legislation that has been formulated with regard to pay equity. It is almost totally--

Ms. Gigantes: Not at the federal level.

Mr. Ward: Neither one of them is proactive, and let us not forget that.

Ms. Gigantes: That is right, but in terms of proactivity and the creation of plans, there are hundreds of thousands of women who will be in the situation where they will not have equal pay plans under Bill 154 as it stands now.

When we are looking at large firms, we have a sense that there is a good handle on personnel policy and that for large employers and employees in large work places, organized or not, it is not going to be very difficult to spot the wage discrepancies, and it is these that can be associated with sexual inequality and discrimination.

In small work places, frankly, my own view is that we are going to find more often than not that all employees get the same pay, and it is \$4.35 an hour.

Mr. Ward: I guess my concern is that your proposal looks to me like it becomes totally dependent on a complaint-based mechanism for nonunionized workers.

Ms. Gigantes: No, not when there is an emphasis--

Mr. Ward: I mean, the effective impact.

Ms. Gigantes: No. If an employer, for example, decided he did not have any problems in his work place and his employees felt he did, the

employees could say, "You have not produced a plan; we want to see the plan," if there were more than 100 employees, or they could go to the commission and say: "We think there is a problem. This employer does not think there is a problem. Would you take a look at the situation?" In the one case, it would certainly call forth the creation of a plan or a change in the plan.

Mr. Charlton: The parliamentary assistant repeatedly keeps saying the difference between this bill and the federal and Quebec legislation is that this has a proactive component to it. It is true it does. But what my colleague is trying to suggest here is that the proactive component is not applicable to all the women even that this legislation will cover, never mind the women who get excluded from this legislation. But the 60-70 per cent predominance question that you are putting into the legislation does apply both to those it is proactive for and those it is not proactive for, and that is part of the problem.

Mr. Ward: I understand your point and the fact that there are the two safeguards in there. I think another fundamental difference in this legislation, in comparison to others, is that there is a fairly onerous obligation on the part of private sector employers as well as public sector employers in the preparation of a pay equity plan. Much of that obligation hinges around the identification through specific terminology that indicates to them how they are to determine the male and female job classes, above and beyond historical incumbency.

Ms. Gigantes: What you are suggesting to us is that the 60-70 per cent test is there to help the employees.

Mr. Ward: It is to help everybody. It is to generate comparisons.

Ms. Gigantes: One can generate comparisons outside a 60-70 per cent test. What I am suggesting to you is that in the end this 60-70 per cent test is not going to be of assistance to employees. It is going to be a barrier that may have to be fought over and that may in fact be messed around with by employers for precisely the reasons that if they can fix the number of incumbents in a female-predominant work group or a male-predominant position and change them around so they do not have to have application, they could create an enormous hurdle for employees to seek enforcement.

Mr. Ward: But I do not see how you have assisted the process by throwing it up in the air and saying, "Historical incumbency will dictate"--

Ms. Gigantes: This legislation calls upon employers in certain firms to produce plans, and we would, by further amendment, require employers to produce information that is available to employees.

Ms. Caplan: I am having some difficulty understanding the argument, because every proactive plan that has ever been developed has this gender-predominance fact, which has set a framework so that you can ensure you are telling employers when and where to look for those comparisons in a complaint system.

I agree with the parliamentary assistant that this is where your amendments lead us: a complaint without the parameters of saving, "These are the positions in which you must make comparisons." I think it will assist employees who can identify themselves in a female-predominant job. I am having trouble following the argument, since every piece of legislation—the Manitoba legislation, the Minnesota legislation—has gender predominance to encourage those comparisons to be made.

Ms. Gigantes: Let us take a look at this linkage now being suggested between proactive equal pay plans and predominance tests. There is no necessary linkage at all. We all know that. Simply because you can point to Minnesota or Manitoba and say, "They have put such tests in," does not mean they are appropriate, and it does not mean they are appropriate for Ontario, because the work force will be entirely different in one place from another. In Manitoba, it is quite different from here. There is a much larger preponderance of public sector employment for women in Manitoba than there is here compared to private sector employment.

When we are looking at this legislation, we know that the most difficult situations are going to be for women who are seeking the effective implementation of this legislation, women who are in the private sector and women who are not unionized in the private sector. We know that only five per cent of the women who work in the private sector have the benefit of a union to assist them in having this legislation implemented.

# 1120

Ms. Caplan: I am not going to continue the debate. I just fundamentally disagree with the position you have taken.

Ms. Fish: I guess I am continuing the debate a little here. I will try to go back and pick up on a couple of things I thought I might have heard the parliamentary assistant say. Let me begin with the figures that Ms. Gigantes has put on the top. I thought I heard you questioning the figures for part-time workers in firms of less than 10. Did I misunderstand you?

Mr. Ward: No. If I could, let me reiterate. I was afraid Evelyn was making the argument that the 500,000 part-time workers are not covered by the provisions of the bill when in fact they are. Casual employees are exempted, but regular part-time employees, even if they work less than one third of the hours of the full-time employees, are covered. So I disagree with the whole argument that the 500,000 are exempted; that is number one. Number two, regarding the figure of 300,000-I think that is what it says-in firms of 10 or less, according to the latest Statistics Canada labour force survey, the total number of women would be 238,000, and it is my understanding that the 238,000 includes part-time employees as well. I guess what I am saying is that I just cannot accept that 800,000 as an exemption.

Ms. Fish: Just so I can understand, are you saying that, based on the data you have and those figures, instead of 300,000, there would be 240.000--if we are rounding it out--in firms of less than 10?

Mr. Ward: Including part-timers.

Ms. Fish: Which would include some part-time people.

Mr. Ward: Right.

Ms. Gigantes: We do not know how many.

Mr. Ward: No. we do not.

Ms. Fish: That would be my next question. Do we not have a sense of how many?

 $\underline{\text{Mr. Ward:}}$  The assumption of the 500,000 citizens is on the basis that,  $\overline{\text{I}}$  believe, 25 per cent of the work force is part-time and the assumption is that, out of the two million, there are 500,000 part-time female employees.

Ms. Gigantes: No, that is not the assumption.

Mr. Ward: No?

Ms. Gigantes: No. In fact, it has to do with the number of part-time workers who are women, which is in the range of 80 per cent. That is how I provided that calculation. In fact, that is how it was provided to me.

Mr. Ward: I guess the bottom line is, we disagree with the numbers.

Ms. Fish: I am sorry. Ms. Gigantes, you had a figure for part-time of which you took 80 per cent; is that how you got the 500.000?

Ms. Gigantes: That was how that figure was arrived at.

Ms. Fish: Okay.

Ms. Gigantes: And Chris is correct about the 300,000 figure; it is 240,000. But those are 1985 figures, and we know that, increasingly, as women find employment, they are finding it in part-time work. What I have tried to indicate here is that these are outside estimates, they are high estimates; but I am also trying to indicate that when you take a look at a high estimate, you are dealing with hundreds of thousands of women for whom this legislation may mean zilch.

Ms. Fish: I guess my question then would be, for a moment, to Ms. Gigantes. Are you agreeing with the parliamentary assistant that the 500,000 part-time workers are now covered and that the problem is that they may be converted to casual or on-call--

Ms. Gigantes: No. We know there are lots of casual, on-call workers. There are lots of them; we do not know how many. Certainly I know people who are casual, on-call workers. We also know it is not that difficult to use this legislation and the exemptions under section 17 as far as part-time work is concerned to make sure the part-timers you have employed in the past now become casual, on-call workers.

Ms. Fish: That is exactly what I was trying to ask you. You agree with the parliamentary assistant that your 500,000 would come under the legislation at first blush. You are putting forth the position that there is a concern that they may be converted from regular part-time employment to casual, on-call employment and would be exempt at that point.

Ms. Gigantes: Frankly, I would be very surprised if they were not.

The other thing I might mention just in passing is that I have not indicated any accounting for the number of people who may be affected in terms of the implementation of this legislation by the other exemptions listed in section 7. That includes red-circling, temporary employee training or development, assignment, merit compensation and skill shortage situations, all of which employers can use to their benefit in terms of trying to make sure this legislation does not apply to their employees.

Ms. Fish: I come back then to the parliamentary assistant. In your view, what would be the mechanism to deal with the concern raised by Ms. Gigantes that regular part-time people now receiving the benefit of protection of the legislation stand in real danger of being converted into casual, on-call employees, thereby coming under an exemption?

Mr. Ward: We are not putting forward any amendments in relation to that. What is being implied is that the potential exists, as it exists and always has, for employers to move workers from part-time to casual. Frankly, I do not believe that is going to be the impact. We do not accept the argument that you are going to have a holus-bolus, 500,000-person transfer over to casual employment. The exemption clause states specifically that even if they are working less than one third of the regular hours, they will still be deemed to be part-time employees. We are almost being asked to respond to the bad-apple symptom.

Ms. Fish: The next question then would be, if someone were technically classified as casual and notionally on call but the pattern of work, if you did not know that categorization, would be identified as fairly regular part-time work, involving roughly the same number of hours a week and roughly the same points that they are working, would that person be covered automatically? If not, would there be a mechanism to cover that person? How does that work?

Mr. Ward: The provision under clause 7(4)(c), "A position shall not be designated under subsection (3) if," which is the casual definition--

Ms. Fish: Sorry; hang on. Where are you?

Mr. Ward: Clause 7(4)(c), page 16 of the bill: "A position shall not be designated" as casual "if the work is performed on a regular and continuing basis, although for less than one third of the normal work period that applies to similar full-time work."

I have trouble seeing how an employer who has a regular part-time employee can simply say, for the purpose of the bill: "Poof. You are casual." If it is a regular and continuing kind of arrangement between the employer and the employee, I would think that if a complaint were generated, the onus would be for the employer to prove otherwise. I do not see that happening.

Ms. Fish: You are saying that from your perspective, clause 7(4)(c)--

Mr. Ward: Is the protection.

Ms. Fish: --meets the concerns raised by Ms. Gigantes about the possible recategorization of the part-time people.

Mr. Ward: The potential exists for employers to try to use that. I guess we have to judge what the potential is of that being successful. Frankly, I do not think it is very great at all.

#### 1130

Ms. Fish: Mr. Charlton, did you have a supplementary on this point?

Mr. Charlton: Yes, I have two comments.

Ms. Fish: If it is a supplementary, I will let you go shead because I was going to move to snother question.

The Acting Chairman (Mr. Barlow): Before you put in your supplementary, I will remind the committee members—I have been reminded by the clerk—that this is a no-smoking committee. I was not aware of that.

Ms. Caplan: I asked the chairman--

The Acting Chairman: Did you? I see. I was reminded that this is a no-smoking committee. If the chairman wants to overrule me when he comes back, he may do so.

Mr. Charlton: There are two comments I want to make. In his efforts to point out the 500,000 part-timers for whom there is coverage in the bill, he neglected to point out that the 500,000, first of all, are not all covered; they include the part-time casuals who already exist in this province. We do not know how many of the 500,000 are regular part-timers and how many are casual, but they are not all covered. That is the first point.

The second point is that if you have been in touch with what is happening in the labour market, again we do not know how many, but we know that the number of part-time casuals is on the increase in significant fashion. I am not as familiar with Toronto as I am with my own home town, but I suggest that the parliamentary assistant go to talk to the women at Woolco at the Mountain Plaza Mall about what is happening in terms of conversion from regular full-time and regular part-time to part-time, casual, on-call.

It is not unrealistic, even without this legislation, to worry about what is happening in that trend. The more incentives we add to cause any speedup of that process that is already going on is a real fear to express, and it is not unrealistic to expect that since it is happening anyway, an additional incentive is going to cause it to happen even more. To what extent, again nobody can predict, but it is a real, legitimate fear.

The Acting Chairman: Was yours a supplementary too, Ms. Gigantes? Would you care to entertain that, Ms. Fish?

Ms. Fish: Yes. sure.

Ms. Gigantes: Very briefly, we know that the rate of unemployment among women in Ontario is higher than that of men. We know that women looking for work can find part-time work, and only part-time work very frequently, when they would like full-time work. We know that the power of part-time workers to effect any kind of agreement with employers—they are not covered by unions—is practically nil, and we know that of all the part-time employees, the most vulnerable are casual part-time employees.

What we are doing here in this legislation is setting up an exemption in such a way that it encourages employers to increase the number of on-call. casual employees as opposed to part-time or full-time employees. I would like to ask in principle why we are doing that. What is it about doing the work in a position on a casual, on-call basis that makes it any less valuable to the employer than a part-timer who works more than a third or a full-time employee?

Further, how do we expect those most vulnerable of people in the marketplace, the people who are casual, on-call and who depend really on the call of the employer to get a few hours' work, maybe twice a week, maybe once every three weeks—any of vou who have had any experience with people who work on call in restaurants, hotels and nursing homes know how vulnerable employees are when they are subject to the call of the employer to get that little bit of work. We are going to ask those people to come in and argue that really they are regular part-timers.

We are talking about some kind of fantasy world where people curtsy to each other all the time. That is not what really happens with people who are

working part-time in this economy, particularly if we are setting up people to have to come out of a position and an employer is calling them casual, on-call employees when previously they had been regular part-time workers. We are kidding ourselves if we think they are going to be able to win that argument. They will not only lose the argument but also the job, whatever it was worth to them. I do not think we are talking about reality.

Mr. Ward: I think the point is that we are talking about reality. The bill is dealing with systemic gender discrimination in the work place, the work place being as it is. I do not deny there are issues relating to that work place, such as contracting out and the designation of part-time to casual employees, and the list goes on and on, but the bill recognizes the work place and the work force as they are.

You make it difficult to argue some of these points, because they are issues out there and they are important. I think we have to remember the bill focuses on addressing the issue of systemic wage discrimination in the work force. To get into the whole argument of this being an incentive for a redesignation to casual employment—I do not believe it is.

Ms. Fish: I want to deal with the gender-predominance set of questions. I am trying to understand from vou, Mr. Ward, what it is you are saying about the gender-predominance issue. When I was listening to the earlier exchange with Ms. Gigantes, it seemed to me you were saying the problem with removing the gender-predominance figures was that, in effect, job evaluation would come in for all job categories.

I inferred your concern was that in removing gender predominance, we would somehow be removing, as a target or purpose of the bill, the redress of systemic gender discrimination. I could not quite follow that line and I wonder if you could help me with that.

Mr. Ward: The point I was trying to make was that the threshold levels are fundamental in order to identify the male and female job classes. Without that mechanism, what are you left with, historic incumbency? I just do not see how a proactive model works unless you lay out some parameters or some definitions for determining male and female job classes, because without them, what have you got?

Ms. Fish: We went back for a few minutes with Ms. Gigantes's proposed amendment to section 12, which it seems to me did deal with one measure, which was historic incumbency. Is it not historic incumbency that you really provide for in taking a judgement when the exact percentage of 60 or 70 is not met?

Mr. Ward: I am sorry? Your microphone is--

Ms. Fish: I am sorry; maybe I am speaking a little bit softly here. I have a bit of a cold.

You posed the question, if there is no gender-predominance figure--the proposal is for 60 per cent and 70 per cent--what are you left with? Are you not just left with historic incumbency? I noted that historic incumbency is a test Ms. Gigantes has put forward in her proposed amendments to section 12.

I am also asking you, are you not really falling back on historic incumbency to deal with the counter-argument that says 60 per cent and 70 per cent are subject to fluctuation and manipulation? Where is the problem with historical incumbency? I do not quite understand this.

#### 1140

Mr. Ward: We are following that. Again, it gets back to the whole element of the proactivity, the 60 per cent and 70 per cent, to establish some parameters for identifying the job classes. You are absolutely right, there is a fallback in there: in terms of in those establishments where somebody can be missed, there is a fallback position to historical incumbency under certain conditions. Again, it is just that. Nobody denies that there is a fallback to historical incumbency for those who are missed, but for the proactive model to work there has to be some method of identifying the male and female job classes.

Mr. Chairman: Ms. Gigantes wanted to get involved in this discussion. I will get back to you.

Ms. Gigantes: The linkage that is being attempted between the notion of the incumbency and the proportion that has to be the test, the 60 per cent female predominance and the 70 per cent male predominance, and the notion of proactivity in the legislation—there is absolutely no connection whatsoever.

Mr. Ward: How does yours work?

Ms. Gigantes: Absolutely no connection. It works very much the same way yours would work.

Mr. Ward: It does not work.

Ms. Gigantes: It works very much the same way yours would work when we get to the final test, as Ms. Fish has pointed out, because if the Queen's Park switchboard operators are now 55 per cent female and are compared to parking lot attendants, who are now 65 per cent male--and that is going to happen; I do not know whether it has not happened already--then what you are going to say is that females presumably will make an application to the commission under subsection 1(4), and guess what they are going to rely on? Historical incumbency.

I will suggest to you a much simpler way of doing it. If you really want to do it, what you do is, for each work place, you sit down and look at the lowest-paid jobs. Guess what? They are all either occupied by women now or were predominantly occupied by women in the past. We know that; that is why we are here; that is why we are doing this.

That is the easiest way to do it. If I were an employer and I worried about whether I had to do a plan, I would not have a bit of a problem. Do not tell me about 60 per cent and whether I have to do 70 per cent. Forget it. I would say, "Okay, who do I pay the lowest?

Mr. Charlton: You figure out there is a problem before you come up with 60 and 70.

Ms. Gigantes: We all know it. That is part of what produces the gross provincial income figures that we see.

Mr. Ward: You are making the argument on behalf of employers-

Ms. Gigantes: If they want to know what to look at.

Mr. Ward: --that it is the simplest and easiest mechanism in order

to determine where and how to make their comparison. It has really nothing to do with the predominance of the positions that exist within.

Ms. Gigantes: If you want to look at the work place and say, "Okay, where do I start?" you start with the lowest-paid job positions and you take a look at whether they are comparable, in terms of the work being done, to some higher-paid positions. Guess what? You are going to find it is true and you are going to have to make a wage adjustment and forget about the 60 and 70 per cent.

Mr. Ward: The situation never exists where that position might be a male job class under--

 $\underline{\text{Ms. Gigantes:}}$  Certainly there are some male job classes that are paid lower than others.

Mr. Ward: Then where do the comparisons follow?

Ms. Gigantes: We know that janitors, who are the bottom of the male class in most work places-

Ms. Fish: I missed the interjection.

Ms. Gigantes: He is saying there is never any--

Mr. Ward: The entire assumption is that in every instance the lowest-paid job is one that is occupied by women, and I am just posing the question, what happens if that does not?

Ms. Gigantes: It is a pretty safe bet.

Mr. Ward: I do not think it is that safe.

Ms. Gigantes: I think it is very safe indeed, and if after that employers want to go to more sophisticated kinds of analyses, I am sure they can do it. But that is certainly where you would start.

Ms. Fish: Part of the difficulty I am having in trying to sort this one through stems from a couple of things. First, I am a bit more inclined to agree with Ms. Gigantes that, in most cases, the lower-paid positions are now, or have historically been, female incumbency positions. I do not think there is a whole lot of argument around that, but someone may have some information or data to refute it. I have not seen any to this point.

The second difficulty I have is that I am trying to get at what it is we are trying to do with the legislation and how an employer, public or private sector, would respond.

It seems to me that what we are trying to do is to redress systemic gender-based discrimination. Members may recall that, during the hearing phase, we had a gentleman before us who made reference to the fact that he worked on a job evaluation plan for the city of Toronto many years ago, and that I had been involved as a member of council at the time.

It is now ll years ago that we did that. The origin of that plan was to deal with systemic gender-based discrimination, in that case public health nurses, which would have easily met the incumbency requirements of 60 per cent female. I think they were probably 98 per cent female.

In the course of dealing with that question, however, its initial comparison being public health inspectors—that was the initial question that came forward; perhaps this is not your intention in the legislation but I just wanted to review this because I think it had quite a misapprehension as it went through—the city did not simply say, "Right, we will take that job class that had 60 per cent female and we will take that other job class that had 70 per cent male and confine our comparisons there." By the way, both of those categories, public health nurses and public health inspectors, would readily have met those categories. Rather, it raised the question in the minds of those of us sitting on council and those of us in management that perhaps there were anomalies throughout the system, some of which may well indeed have been gender-based discrimination while others, perhaps, resulted from something as simple as a failure to review over time.

We had an interesting indication of that from one of the deputants from General Motors who talked about the hourly rate differential to perform a job that was no longer required because technology had overtaken the performance of the job.

So we were not entirely certain but we were in those days at the city quite certain about one thing; that was, we did not want to move to redress a circumstance of gender-based discrimination that we believed existed prima facie in a narrow-based examination, only the nurses against only the inspectors. In the course of so doing, we would perhaps miss out other areas that were out of whack or create a situation where we were compounding a problem by that redress. We were not looking at the total package or the total picture.

We very quickly wanted to move to a situation that essentially would adopt, amazing though this may sound, the precedents and ground broken in virtually all-male establishments in the steel industry, where job evaluation was done company-wide without reference to triggers of gender predominance or male and female percentage thresholds. It was done, as deputants have told us, by labour and management consultants, arising out of the Second World War.

Those job evaluation programs have continued to be applied in several sectors and those job evaluation programs were the stuff and substance of the four key categories that were proposed to be identified and used in this bill as the analysis.

There is nothing very new about them, there is nothing very ground-breaking about them. They were certainly the four that were used by the city of Toronto. The analysis that was done by the city of Toronto in a co-operative framework with our unions was an analysis that went across the board, that did not look at the thresholds, that found some interesting anomalies and that found other places that would warrant some adjustments, some up, some down. That raises another set of questions around red-circling. We did red-circle, but that is obviously not something that is a part of this discussion. That is a discussion for another day.

# 1150

I guess the difficulty I have is that it seems to make some sense to me that you look at what the total package is and deal with that. From a management perspective, rather than viewing that as an onerous burden, I would take my cue from management of the steel companies. It was management that introduced job evaluation schemes, not the labour movement. From a good management perspective, I would want to know what was happening across the

board and not deal in a much more narrow base, which I sense happens with this trigger that I do not quite understand--

Mr. Ward: What you are advocating then is an obligation for a universal job evaluation system on the part of every employer in this province?

Ms. Fish: I am not certain I am advocating that at this point. What I am suggesting to you, and the reason I want to walk through this, is that it seems to me that the likely response, to be a responsible manager as distinct from merely to comply with an absolute minimum, would be to say, "What is the balance within my company?"

Surely that is what management feels it is doing today, so I would have thought that the response would be to look at job evaluation across the board, to make certain that things were fairly well in balance and that at the very least there was not an inadvertent creation of an out-of-balance circumstance by looking at a more parrow set of jobs.

I am just wondering whether what you are saying is that you disagree with that, that you do not think that would be the response, or that you somehow feel it would be better to have only two points in examination, the nurses and the inspectors.

Mr. Ward: The difficulty I have here is you are talking about the potential response in terms of job evaluation as a result of pay equity. What we are talking about is the legislated onus on the part of employers, so it is fine to say that an appropriate response may be a better job in terms of doing evaluations or whatever, but what is the legislated onus once you have removed the parameters by which you define female and male job classes? That is the whole point.

If you want to eliminate those, then you have to replace them with a legislated obligation on the part of employers to do what?

Ms. Fish: Provide equal pay.

Mr. Ward: And how? Do not forget the purpose of the bill is not just to redress the problem; the purpose of the bill is also to identify the problem. That is an obligation that employers have.

Ms. Gigantes: Sixty per cent and 70 per cent as a test do not tell you how. It tells you who can enter the game. It says nothing at all about what happens once the game is entered, in terms of equal pay adjustments. It does not say how you get to where you are going at all.

Mr. Ward: Neither does your proposal.

Ms. Gigantes: I do not require that of my proposal. What I am saying is that I do not like 60-70 per cent, not because it does not get us anywhere, but because it can be a barrier to the effectiveness of this legislation.

Mr. Ward: The mechanisms that are in place in the bill provide the rationale and the parameters for employers to identify and to redress, with fixed notions and definitions. There is some arbitrariness to that—nobody would deny that—and there are some safeguards out of concern over the arbitrary nature of the threshold thing. Once you eliminate that, I just do not see how you have a workable framework for all of the employers in this province. It is fine to talk about the big guys, to talk about the Stelcos and

the public service employees, but we are talking about a lot broader group of employers than just that. When you remove that, I do not believe you have a workable format. Obviously our opinions differ on this. I have not heard anybody yet with a proposed and understandable solution for proactive mechanisms for those employers. Then the argument becomes historical incumbency. Your whole debate is there. There are still going to be disputes and arguments.

Ms. Gigantes: At least you are starting from the position--

Mr. Ward: With what?

Ms. Gigantes: --where you are saying that you are going to look at positions--

Mr. Ward: You are not even starting with agreement of what is a male and female job class.

Ms. Gigantes: In my view, they are identified fairly easily for those with the will to see them.

Ms. Fish: Just to come back to your area of concern, that is throwing things back out, Mr. Ward. It seems to me that if you have analysed your jobs in a job evaluation scheme on the four principal test criteria as envisioned in the legislation and bring your jobs into line in accordance with them, you have eliminated systemic gender-based discrimination in your work place. Would you disagree?

Mr. Ward: I do not disagree that you can resolve a lot of issues of systemic wage discrimination through a proper job evaluation method. What I do disagree with is that you can have a workable piece of legislation that, first, addresses and identifies areas of systemic wage discrimination and then redresses it by some notion of legislating job evaluation schemes for all employers in the province. I just do not see how you can do that.

Ms. Fish: I am still not clear on why you feel that 60 and 70 are required as a trigger in the proactive. Do I take it that is what you are saying and that you are saying if it was a complaint-based system you would not have the gender predominance threshold?

Mr. Ward: You certainly would not have as much pressure for it if it were strictly complaint-based. I still think you need it, but let us not--

Ms. Fish: That is my next question. If you are arguing that it is needed because it is proactive, then I would ask you this question. If it is a complaint-based system and you do not have it, are you not really coming back to the issue of the four fundamental criteria of examination on job evaluation across categories? How is that different from the requirement to demonstrate conformity off the top?

Mr. Ward: The crux of the whole exercise is to make comparison between male and female job classes. Take out the threshold levels--bearing in mind that there is still a fallback for those who are missed for historical incumbency, and there is a fallback for those who have the ability to bargain collectively--then your whole argument is reduced to identifying what are female and male job classes. I do not see how that assists in redressing the problem--to have a whole exercise that requires a substantial amount of argument merely to come up with what are the female and male job classes.

Ms. Fish: Ms. Gigantes, did you want a supplementary on that?

Ms. Gigantes: What we are hearing from the parliamentary assistant is that this is a proactive piece of legislation. It is proactive for places of employment with over 100 employees. It is not proactive for anything else. Let me point out to you that of the two million women in the Ontario labour force, about 600,000 of them work in work places with fewer than 100 employees. Depending on the definition of "establishment" that we arrive at, it could mean that over a quarter of women who might expect that they are going to be able to use this legislation effectively will, in fact, have the same kind of complaint-based mechanism--if somehow they are not exploited--as both the federal and Quebec legislation provide.

What he has tried to say is that this first test, which is 60 per cent female predominant compared to 70 per cent male predominant, is somehow linked to the notion of the creation of plans. I do not see it that way. I really believe if you say that the legislation calls upon employers, where there is a union, in conjunction with their employees, to draw up a plan that addresses the question of comparability of the value of the work done in terms of skill, effort, responsibility and working conditions, with the comparability of the pay levels, this is not outside the scope of possibility and, indeed, ease within most places of employment.

Most large places of employment already have systems in place that more or less deal with job evaluation. The large bulk of women in Ontario either work for very small firms or very large firms. If we are talking about employers in the private sector who have more than 500 employees, the number of women in those places of employment in 1985 was 780,000. That means those 780,000 women are in work places that likely have some systems of job classifications and job evaluation or whatever:

Then we take the other women about whom we were talking, and I suggest very strongly that an employer, looking at this legislation, can say, "What positions do women fill in my firm?" We know that women are all lumped in three or four groups in a firm and we know what the pay levels are. What the employer is then called upon to do is to make a comparison between those positions and positions that have traditionally been occupied by males and paid at what we call male rates. That is the same kind of thing that would happen under the 60 and 70 per cent test, but if we remove the 60 and 70 per cent test, we remove an artificial barrier to having that comparison take place.

In my view, in terms of the changing nature of the work force, the fact that more women are entering more traditionally male occupations and more males have been forced, in many cases, to take on jobs which were traditionally female jobs in order to get a job at all, and they have been forced to have traditionally female job rates apply to the work they do, we would be crazy to set up an additional barrier such as the 60 and 70 per cent test.

We know that very few women in the private marketplace are organized. They are going to have to do this battle without the benefit of union assistance. Only five per cent of the women who work in the private sector belong to unions. They are going to have to do it by themselves if they have to make an argument over this, and it is not easy. It is not going to be easy in some places where there are unions and there have to be battles over the 60 and 70 per cent. Where there are no unions, forget it. You are putting too much of a test on a woman to be able to make that kind of argument.

Mr. Baetz: I have a question for Ms. Gigantes. I think I know the answer. Are you saying that in practical terms if those percentages or any percentages were removed, this legislation then would really apply to every employer-employee situation?

Ms. Gigantes: Yes, if we got rid of the exemptions.

Mr. Baetz: Yes, but let us--

Ms. Gigantes: The 60 and 70 per cent sets up a test for the application of this legislation which I think is a limitation and which I believe will effectively remove the application of the legislation from benefiting women, and we do not know how many.

Mr. Baetz: But it would then extend to virtually all the employer-employee situations, regardless of size, with the exceptions that are mentioned elsewhere in the act. It would open it up to all of them.

Ms. Gigantes: Those are separate items. That is right.

Ms. Fish: Can I just ask the parliamentary assistant for an explanation of the choice of 10 as the threshold below which there will not be coverage in the bill?

Mr. Ward: I think that is shifting the discussion a little bit, but--

 $\underline{\text{Ms. Fish}}$ : I realize that, but I think we have gone as far as we can go with 50 and 70 employees.

Mr. Ward: Okay. I guess in terms of arriving at a cutoff point, the first concern-again, going back to the whole focus of the bill and the preamble--was to address systemic wage discrimination. At some point, you get below a level where there are not enough employees even to make comparisons. I think that was a factor in determining the cutoff point: to what extent do you have the ability to make comparisons within an establishment?

Ms. Fish: Would you apply that same reasoning to the proposals that were brought forward by some of the deputants to establish minimum incumbency requirements in positions? You may recall that the Canadian Federation of Independent Business made a recommendation for minimum incumbency.

Mr. Ward: No, I do not think so. The difficulty with the minimum incumbency provisions is that you will get into circumstances—and I think there are concrete examples of that, for instance, in the Manitoba legislation—where you set minimum incumbency levels and then you eliminate totally the ability to make comparisons between job classes because of the minimum incumbency level. I believe, and I could be wrong, but a minimum incumbency level of five, for instance, would eliminate far more women from coverage under this bill than the 10-and-under exemption. There is an enormous difference.

Ms. Fish: I agree with that. I am just--go ahead; finish your point.

Mr. Ward: I suppose there are other factors that may have played upon the ultimate decision to set a cutoff level. The degree of discriminatory wage levels within small firms is, in fact, less than it is in large firms. That has been established through some of the background studies that we made available to members of the committee. I think that was a factor as well.

Ms. Fish: All right. The other reason I asked you about how you would deal with the minimum incumbency suggestion that had come forth from some of the deputants was that you had indicated the rationale for up to 10 as being a concern about the numbers—that the numbers may be too small to compare—and the legislation currently would provide an opportunity to compare job classes of incumbency of one against others.

Ms. Gigantes: We have an amendment by the government.

Ms. Fish: Yes, to section 1. Yes, sorry, I was reading the--I meant the government.

Mr. Ward: In fairness, I think it was clarification. The intent really never changed, but it was clarified. It was always meant to be one.

Ms. Gigantes: It is clarified.

Ms. Fish: It is clarified by amendment. In fairness, I think the parliamentary assistant had indicated that at some point in the course of the discussions. If that was doable, then I wondered about the exemption of under 10. You have indicated, however, that there might be another trigger for you.

 $\underline{\text{Mr. Ward:}}$  It is not an issue of doability, as much as it might be of--I  $\underline{\text{mean, I}}$  would concede that it is doable, even for the 10 and under. I guess what it comes down to is the extent to which the necessity exists as well.

## 1210

Ms. Fish: I have a question that has not come up in what Ms. Gigantes has there on coverage--were we to sit until 12 or 12:30?

Mr. Chairman: Until 12:30. I was going to suggest to the members of the committee that if they wish, we might be advised to cut off a little early in case they wish to review the amendments. I was thinking of a 12 o'clock cutoff, but we have gone past that. It is entirely up to the committee whether it wishes to go until 12:30.

The sitting times we agreed to were 10 to 12:30 and two to 5:30. I am going by that, but in light of the first day's sitting and since you received these amendments late, I was going to ask whether you wanted to cut off early. You can still do that but not as early as I had intended.

Ms. Fish: I certainly do not mind cutting off early. Let me indicate what my question is; the parliamentary assistant may wish to answer this at a later time anyway. It is on the question of whether there had been any thought given to the disposition of Bill 105 on the public service, in that we still have that sitting there. That is a question of a slightly different sort, but none the less a question of coverage, that I would like to explore, at least in a preliminary way, while we are on the subject of coverage. I put that out, and if you wish, we can come back to it. I am content to do that.

Mr. Chairman: We will have the parliamentary assistant take the question under advisement, and perhaps he can come back this afternoon with the response on that.

Ms. Fish, if I may break off your line of questioning for a moment, you may have the floor back later, if you like. Dr. Stevenson, you had a question,

and I have not had you on the floor yet. Do you want to save it until this afternoon?

Mr. Stevenson: Yes, I will wait until later.

Mr. Chairman: Before we break, there is one other question I wish to ask the committee. In an attempt to be as flexible as possible, I have again reviewed Erskine May in connection with some of the amendments that have been brought forward and that I have had an opportunity to review. Erskine May makes it very clear, and I can read you the sections and subsections if you like, that any expansion of the scope of the bill by other than the government is out of order. We went through this exercise in Bill 105, and there have been arguments both pro and con with respect to what are the rights of the opposition in connection with amendments.

Subject, of course, to whatever argument you may want to raise—and I suggest it should be a matter of at least some discussion this afternoon if time allows—the chair will interpret that, as broadly as it can to allow as many amendments as it can, to imply that if there is any substantive expansion of the scope of the bill as proposed by the government, it has no other alternative but to rule those amendments out of order.

I did that with Bill 105, and you as a committee turned around and voted the chairman's decision as being inappropriate in its applicability to those circumstances. I appreciate that may well happen again, but I warn you in advance that I see some amendments that are not in concert with the intentions of the government as they relate to Bill 154. Certainly, the same thing came up in Bill 105. I just warn you in advance.

Ms. Gigantes: Can I--

Ms. Fish: Hold it; just a second.

Mr. Chairman: It is an interpretative thing.

Ms. Fish: I want to ask a serious question.

Mr. Chairman: That was a serious comment that I made too.

Ms. Fish: I realize that; I just did not want us to get off on a little bit of banter.

In terms of the discussion we have been having, for example, on the gender-predominance question and the 10 employees trigger question—I think those are the keys that would expand coverage there, as well as perhaps the suggestion around the definitions of casuals under exemptions—can you share with us which, if any, of the amendments you have now received would fall in the category of the current thinking that they would be out of order?

Mr. Chairman: We have a very substantive list of amendments, and I cannot give you in order which ones specifically would be ruled out of order; but if an amendment requires an expansion of the bureaucracy, the administrative staff required to police the situation, that is an additional cost that the government has not anticipated.

Bill 154 very clearly indicates that the moneys will be made available under section 37; it says, "The moneys required for the purposes of this act by the crown in right of Ontario shall, until the 31st day of March 1987, be

paid out of the consolidated revenue fund and thereafter shall be paid out the moneys appropriated therefor by the Legislature."

I have to assume that the government has a figure--I do not know what it is--set aside for the purpose of making this bill workable and that it includes the administrative staff that would be necessary.

If you remove the 60-70, which is one of your questions, or if you remove the 10, and expand the bill, in other words, on the basis of all of Ms. Gigantes's arguments to date--I do not want to get into a debate or we will not be able to get out at a reasonable time this morning, but all of Ms. Gigantes's arguments were predicated on the basis of expanding the bill to include people who fell between the cracks and were not covered by the proposals in Bill 154 as we have it before us now. The interpretation of the chair, therefore, will have to be that it is going to take more people to police this expanded group of many thousands of additional women who would be covered by the bill.

It is not a question of whether I agree or disagree with what Ms. Gigantes or any of the other parties is saying with respect to the expansion of the bill. It is simply that the chairman is in the very awkward position of not being able to allow amendments which expand the scope of the bill. If you do not agree with that, I ask you to refer to Erskine May's Parliamentary Practice. I know the question has come up, "How come it has been allowed in the past?" I suggest the chairman has been wrong in the past, if he has allowed it. It is as simple as that. The direction suggested in Erskine May is very specific. You cannot allow the scope or the intent of a bill to be substantially expanded.

Ms. Fish: I just want to raise two points for clarification. One, could you please give us a citation for the rulings so we can review that in the lunch hour? I think that would be helpful.

Mr. Chairman: Yes.

Ms. Fish: Two, do I take it that the basis of your decision would be the balance of amendments and their impact upon anticipated public expenditure; that is to say, if there is an amendment that in your view expands and it is balanced by another amendment that you might be persuaded would contract, the issue would be balanced? Is that correct?

Mr. Chairman: Yes, with one other caveat, that being that if it is whispered in my ear by the parliamentary assistant that he does not consider that to be a substantive expansion of the bill, then I obviously will take that as a signal from government that it is not concerned about whatever those additional expenditures might be.

Ms. Fish: Has he whispered in you ear yet on the question of any of these items?

Mr. Chairman: He never whispers in my ear. So far, I have received no notes, no whispers, no direction. I am only indicating to you a bit of the catch 22 I am going to find myself in.

Ms. Gigantes: What I have to say really echoes something Ms. Fish just said. Looking at certain amendments, it may be that one can say we are going to make sure that so many more tens of thousands or hundreds of thousands of women will have legislation applied to them in this area than

Bill 154 would propose, but on the other hand, further amendments to the legislation may be such that we can set up a process which we feel would be more effective and more efficient in the first round, thus requiring much less enforcement.

Given that is the possibility, I request that you not make decisions on what you would feel to be in order or out of order on an a priori basis but that you go with us through the legislation and make a determination in your own mind after that process is completed. One cannot simply say, "X is going to mean an expansion," when we do not know what other parts of the amending process may produce that will convince you we are going to end up with a better-oiled machine.

 $\underline{\text{Mr. Chairman}}$ : Those kinds of tradeoffs are possible, of course. It is an interpretative thing, and I appreciate that. You have to take all those equations and attempt to balance them off in such a way as to come up with what I hope is ultimately an intelligent decision.

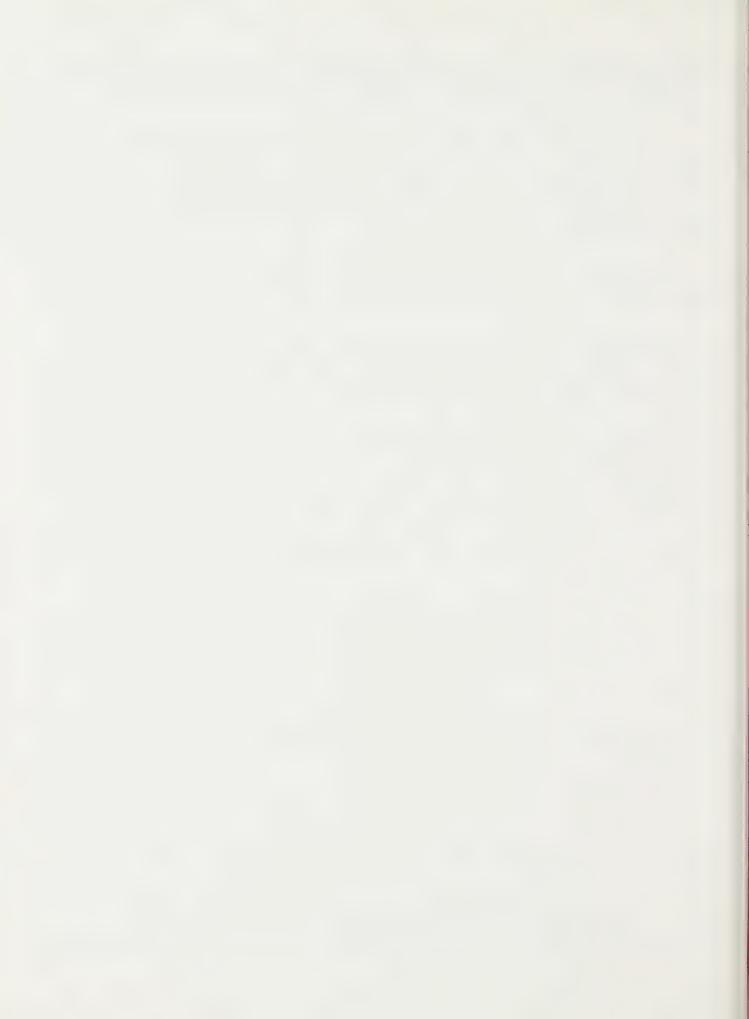
I indicated at the outset of my remarks that I will try to be as flexible as possible on the question, but I feel very committed to the principle, because it is parliamentary practice, that any substantial scope—and I am even using the word "substantial," which is my editorializing; it discusses the scope of the bill being enlarged, not "substantial" at all.

If there is some nuance to the bill which expands it modestly, we have done that in the past and our historical practice has been to allow the opposition parties to do that kind of thing. I cannot give you a specific for what "substantial" means, but once it reaches into an area that will require an enlarged or expanded expenditure on the part of the government of Ontario, then I have to warn the committee that amendment may well out of order.

I will be careful with it, and I am not going to be fixed in my approach. We will try to work it out. I appreciate your comments, Ms. Gigantes.

 $\underline{\text{Mr. Ward:}}$  I guess you will not see me whispering in your ear for a while.

The committee recessed at 12:21 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

MONDAY, MARCH 30, 1987

Afternoon Sitting



# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward. C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Also taking part:

Hart, C. E. (York East L)

Clerk: Mellor, L.

#### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Deputy Senior Legislative Counsel (French)

Evans, C. A., Research Officer, Legislative Research Service

#### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

### Monday, March 30, 1987

The committee resumed at 2:11 p.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good afternoon, members of the committee. We can resume our discussions on Bill 154. At the time that we broke for lunch, I believe Mr. Stevenson had a question he was going to place, along with some discussion of what had taken place with regard to the chairman's position relative to certain amendments. I am not ruling on those amendments in anticipation of them. I will have to make the ruling when the amendments are officially placed before the committee. I will go back to Mr. Stevenson now for his questions or comments.

Mr. Stevenson: I was going to continue the line of questioning on gender predominance and then get into some discussions on definition. I think my colleague Mr. Baetz has some discussion about our amendments and about the regulatory function. I will defer to him at this time and ask my questions at some later point.

Mr. Chairman: Fine. Before Mr. Baetz begins his discussion on the amendments, I want to take Mr. Barlow's question because he raised his hand just a moment ago. Mr. Baetz, have these amendments been circulated to the other parties?

Mr. Baetz: No, I believe the clerk got her copies just now. I am sure others are going around.

Mr. Chairman: So they are in the process of being distributed.

Mr. Baetz: I hope so. I am assuming that much.

Mr. Chairman: We will go to Mr. Barlow.

Mr. Barlow: I have a couple of comments and some procedural questions, if you want to deal with them now. As we get down the road by way of procedure, will we be standing down certain clauses? Will standing down certain clauses be acceptable to the committee as we go along if there is something that is going to relate to something else down the road? Along with that, will there be an opportunity to reopen clauses as the debate goes on?

Mr. Chairman: I would like to complete sections as we proceed. I have already agreed that we will take amendments in a group for debate purposes if the central thrust of the discussion involves more than one amendment. As you well know from going through the amendments tabled with us now, there are a number of amendments that cover essentially the same topic, but they trigger a series of changes. If you agree with the fundamental

position put forward by one of the amendments, then in all probability, you will agree with the balance of the amendments as they relate to that section.

In terms of reopening, you can reopen at any time with the unanimous consent of the committee, but I will not reopen unless I have that unanimous consent. Once it has been dealt with, it has been dealt with. As you well know, Mr. Barlow, having served as a chairman for many years and having sat in the same chair I am in now on more than one occasion, the problem is that in all probability you will never end up with a completed bill if you do not finish the sections in some kind of orderly fashion.

Mr. Barlow: Particularly with this bill, though, we might be talking about clause something-or-other early, in the first 10 for instance. That might trigger something or we might get into the later debate and trigger something we have already reflected upon. You are suggesting it could be reopened for further discussion with unanimous consent.

Mr. Chairman: Yes. If I may suggest this, I think the individual members of the committee, through their persuasive powers, would be able to convince their colleagues that it should be reopened for whatever reason, and then I am at the wish of the committee. But I will not accept a motion to reopen unless I have unanimous consent. That is the only way we can proceed in a reasonably uniform and fair fashion.

The parliamentary assistant reminds me that the second part of the question is the issue of standing down. I do not have any strong feelings on that, if there is a reason to come back or whatever.

Ms. Gigantes: When we started the discussion this morning around the topic of the coverage implied by the legislation, I gave an indication that there were four areas of the bill affecting the question of coverage for which we had prepared amendments that I would propose to put to the committee. They were dealt with very much by the discussion we had this morning.

These would be section 17 that deals with the question of coverage for women who work in places of employment with fewer than 10 employees; section 7, in which I would like to severely restrict the number of exemptions under the legislation; section 5, which sets up the 60-70 per cent test; and a new subsection 12(5) that would make provision for the Pay Equity Commission to deal with the situation where there is no male comparable group. Those are the four areas I would like to deal with under coverage.

Mr. Barlow: More or less as a group? Is this what you are suggesting?

Ms. Gigantes: If we deal with items in that way, when we are finished with that, we can say we are finished with a series of amendments that might affect coverage. If other people have other amendments to put on the subject of coverage, we could deal with them all together.

Mr. Ward: On that point, though, you would agree that there are distinctly different issues in those four sections as well. For instance, your subsection 12(5) comes into play only with the section 5 amendment under gender predominance. Some of those flow from the others, whereas section 17 would be the 10-and-under exemption which you can say is distinct. It is the same broad issue, but it is a distinct item. They do not necessarily have to be dealt with as a package. There are a series of issues under the broader issue of coverage.

Ms. Gigantes: That is right. It has been my suggestion to this committee that we should deal with those sections that impact on coverage as a group. Once we have dealt with that, it is behind us and we can move to another area.

Mr. Ward: It is just that I can foresee areas of agreement and areas of disagreement in that group before us.

Ms. Gigantes: Yes, I agree.

Mr. Ward: There is not going to be consistency.

Mr. Charlton: She is not even suggesting that they should be voted on as a package.

Ms. Gigantes: No.

Mr. Charlton: Just that they get moved as a package of amendments which deal with the question of coverage.

Ms. Gigantes: It is just a question of procedure.

Mr. Charlton: They still have to be moved independently.

Ms. Gigantes: That is right.

Mr. Chairman: All right. I will move to Mr. Baetz at this point if you are ready to proceed.

#### 1420

Mr. Baetz: I will be brief. We have now submitted to the clerk a number of amendments from our caucus. No doubt more will be coming but the major amendments today have to deal with the definition of the minister and the proposal is to transfer the responsibility for this legislation to the Minister of Labour and to the director of employment under the Employment Standards Act.

At this point I do not want to go into an exhaustive review of why we feel that. I do not think this is the time to do it. We feel that the Minister of Labour and particularly the Employment Standards Act seems to us a far more logical home for this legislation. It is there. It has many years of experience and history behind it. If at the present time there may not be in that particular ministry or in that particular directorate the kind of staffing necessary to carry this out, we recognize that of course that could and should be expanded to carry out the operations here.

We have felt that this is the logical home for this very important and new piece of legislation. We have also been persuaded and encouraged by our initial feelings on this by the many observations, very valid we believe, made by delegations that have appeared before us from many sectors of society, including of course the business groups. We feel this is where it should go. We always have some qualms about setting up a brand-new mechanism, in this case, as has been proposed, under the Attorney General's office, a ministry that is really not involved in the day-to-day work of labour standards and the kind of work this commission has been doing.

That in essence is the heart of our amendments. My colleagues and I will

be speaking to this matter in much greater detail as we get into clause by clause.

Mr. Chairman: Our practice this morning was to allow members of the committee to question the amendments, at least in general; perhaps not in detail. If you wish to carry that on in terms of the representatives from the other parties, you are welcome to do so at this point.

Mr. Baetz: A few minutes ago the amendments had not been circulated to members of the committee. They may have been by this time; I doubt it. They are on their way and should be here presently. Perhaps we might wish to hold the questions until members of the committee have a chance to look at the amendments more carefully.

Mr. Chairman: You have outlined what the position is. On the basis of that, we can either wait for some of the amendments to arrive or you can begin any queries you may wish to raise at this point.

Ms. Gigantes: I am getting a bit confused about what is going on here. This morning we had an agreement that we would go through the legislation and take a look at the broad issues that affect how the legislation will work and the amendments that would be related to those issues. It was in that context that we had a discussion of the coverage implied by the legislation this morning.

Mr. Chairman: That is one of the issues, but I suggest this is also one of the issues.

Mr. Ward: It is a separate issue.

Mr. Chairmen: It is not the same issue but no one dictated the New Democratic Party agenda and I do not think it would be appropriate if the other agenda were dictated either. I think the Conservative Party representatives have the right to bring up the issue of where they feel this legislation should be administered. That is essentially the thrust of what Mr. Baetz has proposed.

Mr. Baetz: We would have no hesitation at all to go back or even to go to any further issues the New Democratic Party would wish to discuss at this time. The only reason I mentioned it here was that I thought everybody was interested in whether our party had some amendments to make. I simply said: "Yes, we have some. We have tabled them with the clerk and we may have more."

Mr. Chairman: I am not certain, Ms. Gigantes, of your point. Is it that what Mr. Baetz is doing is out of order?

Ms. Gigantes: Certainly not. If the discussion on the question of coverage is complete, I am prepared to move the motions the NDP has tabled that relate to coverage, so we can deal with it and get it over with.

Mr. Barlow: On a point of order, Mr. Chairman: This morning, I thought we said that we were going to discuss all the various broader issues in a wide-ranging context until such time as we get the broader issues in front of the committee in a free-wheeling discussion, rather than zeroing in on the amendments at this time. I think this is what Mr. Baetz is suggesting. One of our positions will be that there will not be a Pay Equity Commission

but that it will fall under the Employment Standards Act. That is a fairly broad issue, I suggest.

Ms. Gigantes: That does not affect the items that we discussed this morning in terms of the coverage of this bill.

Mr. Barlow: No, it does not.

Ms. Gigantes: What I am suggesting is that we can have free-wheeling discussions on any number of issues involved in this legislation that can come to nothing unless, at some point, we agree on the procedure for dealing with those issues in terms of amendments before this committee and voting on them.

Mr. Chairman: Ms. Gigantes, with due respect, you have raised the issue of coverage. I am going to go to the other parties and I am going to go to the Liberal Party as well with respect to any discussion it wishes to have on its amendments. I am not taking it in any particular order other than I invited you to go first this morning.

Once the Conservative Party has had its opportunity to place its amendments, which it now has done, and to discuss those issues of broader coverage of the bill, I will then move on to whatever issue the other party wants to discuss. We will then come back and deal with the issues in some sort of order. I do not have any hesitancy whatever in dealing with the issue of coverage first, if that is what the committee wishes to debate. That is certainly the central gut issue in this bill, or one of them, but there are other issues as well. You introduced one. Surely you would want the other parties to have an opportunity to introduce their issues as well.

Ms. Gigantes: I thought we had made a determination this morning that we would deal with one area and the amendments related to that, and come to a vote and a determination of how we were going to proceed on that area.

Mr. Chairman: I do not think that was my interpretation. Unless the members of the committee wish to correct the chairman, I thought we were going to review an agenda of items and then try to deal with them in group form so that they picked up all the amendments. We were going to allow for some discussion in a comprehensive way. Mr. Ward, do you want to comment?

Mr. Ward: My impression from your opening this morning was that we were going to have a broad discussion on two issues that you mentioned; that is, coverage and timing--

Ms. Gigantes: I also mentioned plans.

Mr. Ward: --and the plans. It certainly was not my impression that we were necessarily going to finalize both those issues today. It seems to me you could divide the focus of the bill into three areas; the coverage, the timing of the plans and the implementation. If one group wants to discuss the timing at some point, it was not my impression that it had to be after we had completed the discussion on the issue of coverage.

Ms. Gigantes: What I sense is a feeling on the part of committee members that we are not going to have any votes for a couple of days.

Mr. Chairman: I do not know that.

Ms. Gigantes: We are just going to have discussions for a couple of days.

Mr. Ward: We are prepared to vote at any time, but in fairness, none of us has had much of an opportunity to review each other's amendments either. As soon as we can start voting clauses, all the better, but I do not think it was predetermined this morning what issues we would vote today.

# 1430

Ms. Caplan: I think that it was also left this morning that if a straw vote were requested at any time on any of the amendments so that we might just see what the positions might be, as opposed to having it formally in clause-by-clause, that was acceptable too. I thought that was part of the understanding.

Ms. Gigantes: Let me just point out that we spent two hours this morning discussing the question of coverage in the bill and that many of the questions that were discussed can be dealt with in terms of determination by this committee, by taking a look at four amendments. If other people have other amendments that affect coverage under this bill, let us have them now.

But we have six and a half days in total to deal with this pretty complex piece of legislation and, it seems to me, unless we settle down and start taking some votes instead of having an interminable discussion and straw votes. we are not doing any business here.

Mr. Baetz: I certainly share the views expressed by Mr. Ward of all our discussion here this morning. I thought we had a very good discussion, a very useful one and it was on an issue that was proposed by Ms. Gigantes of the New Democratic Party. But I certainly did not think that we would be terminating a general discussion like this on a very key issue of the bill, with a vote, because I would imagine, if we were to vote at that point, even if it is on a broad issue, it does not pre-empt a later clause-by-clause vote. So I feel quite happy and content in carrying on with the discussion of the issues and then moving on eventually, when we are finished with that, to clause-by-clause.

 $\underline{\text{Mr. Chairman:}}$  If it works out as effectively as I hope it does, we may deal with the clause-by-clause more efficiently and it may go in a much more expeditious fashion.

Ms. Caplan: One of the things that has been happening at the committee looking at the freedom of information bill, of which Ms. Gigantes is a member, is exactly that. The chairman entertained amendments and the discussion, and then there was some indication of the feelings of a consensus of the committee so they could then be set aside. If there was no consensus, or if the consensus was clear, the amendments were to be withdrawn or held off for a vote. I believe it does expedite the process and would suggest that to you for your consideration.

Mr. Stevenson: Certainly, I would agree with the feeling of the parliamentary assistant that his understanding of the discussion this morning was the same as mine. We are not, at least I am not, prepared to go ahead with votes on coverage at this point, because I want to ask some questions on definition that certainly have some implication on coverage and the questions that I stood down from this morning.

I let Mr. Baetz go ahead just to get our amendments discussed briefly here, at the committee now. Certainly, one of the issues in this bill is the administration and regulatory function of the bill. I think it is a very important issue and I am not sure how you can go ahead and move totally on one particular section without having at least some discussion on a broader issue on some of the other major factors and major issues involved in the bill.

Now, if you wish to shorten the discussion a bit somewhat that is fine, but I do not see how we can move ahead and discuss these things in total isolation from one another.

Mr. Chairman: Okay, we are back to any questions. The amendments have been circulated. I realize you have not had a chance to read the latest package that has been placed before you. However, if you do have any questions of Mr. Baetz, with respect to those amendments or at least, the ones relative to the administration of the pay equity bill, now would be the time to raise them. I take it there are no questions. I will move on to--I am sorry, you had a question?

Mr. Ward: Just one, and it is only with the benefit of a 30-second review. I understood from Mr. Baetz's introductory remarks relative to this, when he was expressing some concern about the function of the commission as it relates to the enforcement of the act, basically, what is in here is nothing short of an amendment of the Employment Standards Act to cover pay equity.

Mr. Baetz: Yes, and enforcement review.

Mr. Ward: We are not talking about an enforcement of the pay equity piece of legislation. With these amendments, it almost seems as if we are dealing with nothing short of just amending clauses to a different piece of legislation.

Mr. Chairman: Do you want to make a comment on that?

Mr. Barlow: I do not interpret it that way, and as you said, you had a 30-second review and for that we have to accept the responsibility, but the feeling is that the establishment of a Pay Equity Commission is not the way we would like to see this develop.

We feel the enforcement should fall under the Employment Standards Act. There is already an enforcement agency in place at present. One of the amendments, of course, because this is what the New Democratic Party is proposing in one of its amendments too, moves it into the area of the Ministry of Labour, where the Employment Standards Act is administered.

We feel that is the place; on administration, on a level of enforcement; since they are used to dealing with employment-related matters. We see these as employment-related matters, and in moving these amendments, we would put them in that jurisdiction so that they would be enforced in the same way as any other labour-related piece of legislation.

These ones do not change the legislation in any way, shape or form except the area from where they would be enforced.

Mr. Baetz: We frankly feel that to make any amendments to the Employment Standards Act is, in a sense, a somewhat minor step that would have to be taken, compared to the establishment of a brand-new piece of machinery elsewhere. We do not see that as a major problem to following this particular

route. Certainly, as I indicated, if at this point there would not be adequate staffing or adequate resources in that directorate to handle this new and rather major piece of legislation, and we expect that is the case, that can be corrected quite easily.

Mr. Ward: Again, I guess what I am looking for are the issues relative to the implementation of the legislation that you are trying to resolve by these amendments. I think I understand some of the issues that were brought forward in terms of the delegations that appeared before us, and while some of the presentations may well have said that their preference would be in the employment standards branch, it seemed to me the much greater thrust was the whole issue of differentiating what the roles were within whatever agency was left with the implementation of pay equity.

Mr. Baetz: I do not think there should be any great problem in devising the new methods of intervention the director would have to devise. It stands to reason that the directorate would have to be doing some things it is not now doing and would have to do some things in a way it is not doing them now. But at least there is this more natural home for it within that ministry and within that particular directorate.

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It does not mean necessarily that it simply becomes a clone of what is there right now. Certainly that the overall umbrella and the logistical support could be there, and the fact that the business world is somewhat more familiar with that particular ministry and that particular directorate, may facilitate the introduction of this new legislation much more than if you were to create—as has been proposed in the bill at the present time—a brand—new mechanism, a brand—new being, strange to everyoné. Of course, when people do not know what to expect, there is always a sort of initial fear about it.

These are some of the reasons we felt it makes more sense to have it over in that directorate.

Mr. Chairman: Is there anything further on that question? If not, is there any comment from the government party with respect to the amendments proposed by your party?

Mr. Ward: No, Mr. Chairman.

Mr. Chairman: All right. Would you like to begin with the bill then?

Mr. Stevenson: I have some further --

Mr. Chairman: If you are through discussion, I am moving to the bill.

Mr. Baetz: No, he is not.

Mr. Chairman: I am just telling you what I am going to be doing.

Mr. Stevenson: Just let me get my papers organized. I would like to clarify a few thoughts in my own mind raised by this morning's coverage. In. looking at the bill as printed versus the amendment—I believe it is pages 34 and 35 we were looking at in the New Democratic Party amendments this morning. To pick an example: in a day care centre, where we have only women employed and more than 10 employees, how does the position of the NDP amendment differ from that of the bill, as drafted? Let us assume for a moment that the group

involved thinks it is underpaid for the training, skill level, the job it is doing and so on, and wishes to have that addressed. How does your system address that problem, and how does the bill? I do not think it addresses it. Anyway, I would like to get the distinguishing features of the two situations.

Ms. Gigantes: Mr. Chairman?

Mr. Chairman: Yes, please, go ahead if you like. Mr. Ward, you may wish to respond as well.

Ms. Gigantes: You are right that the legislation we have before us does not address it. What we have had is a commitment made in public by the Attorney General (Mr. Scott) that he would ask the Pay Equity Commission to devise some mechanism for dealing with the no-male-comparable situation, for example, in a day care centre, a nursing home or a library, where there is no comparable male work to which the women doing typically female work can compare their positions, to determine whether they are getting adequate levels of pay.

Our proposal is a step further than what the Attorney General has suggested. We have proposed that the legislation be amended so that the equal pay commission—which you would not have—would set up the mechanism for determining how to make a comparison for the all-female work place or the no-male-comparable work place, whichever it was, and essentially determine the elements of the plan for that work place.

Once it had been done for one day care setting, it could obviously apply very generally to many day care settings. Once it had been done for a nursing home, obviously the same kind of model could be used for other nursing homes. Once it had been done for an all-female library work place, it could obviously be applied to other comparable work situations. All that we are saying is that the commission should legislatively be given the responsibility and the mandate to make those determinations.

We do not know how many such work places there are in Ontario, nor do we know how many women are working in such work places in Ontario. But there will be several tens of thousands; that we do know.

Mr. Barlow: Again, I was not on the committee when the delegations appeared before it, but you say the Attorney General made a commitment to satisfy that requirement. I presume that is in the amendments and I must have missed it.

Ms. Gigantes: He did not do it before this committee; he did it to the media and in the Legislature, if I recollect properly.

Mr. Barlow: Perhaps the parliamentary assistant might respond as to whether there is an amendment coming forward from the government to cover this point.

 $\underline{\text{Mr. Ward}}$ : It is in the package of amendments actually, under section 36a, "(1) The minister may require the commission to conduct such studies related to pay equity as are set out in the minister's request and to make reports and recommendations in relation thereto."

Ms. Gigantes: It does not speak to the male-comparable work place.

Mr. Barlow: It does not satisfy me.

Mr. Ward: But that is the intent.

Ms. Gigantes: If it is the intent, then you will be happy to support our amendment, which speaks to it directly.

Mr. Ward: I have not had a chance to read your amendment, and I would never make that commitment without first reading it.

Ms. Gigantes: How would you do it without a commission?

Mr. Barlow: It would be the director; it would fall under the director of the employment standards branch. We have also proposed some form of tribunal. I just went through ours again. I had a quick look at those over the weekend. There would be a tribunal to enforce some of these standards that would be required. These are things that we have put out.

Mr. Chairman: Do you have something further, Mr. Stevenson? I was going to go with Mr. Ward. Did you have a comment?

Mr. Ward: No. I did not find out that in fact we did table amendments. It was the intent that this amendment was to address that issue.

Mr. Stevenson: Okay. We go a little further. Again using this just as an example, in a household where we have two women workers, one being a domestic working maybe half a day a week and the other one looking after children part-time or full-time, under the bill, as I understand it, there is no coverage.

Mr. Ward: They are exempt under the 10-and-under, within a household.

Mr. Stevenson: What does the NDP amendment do in that situation?

Mr. Ward: It removes the 10.

Mr. Stevenson: Would there be any outside comparison? I assume, if requested, there would be a comparison between those two jobs within the home. Would there be an outside comparison, outside the home?

Ms. Gigantes: That would be up to the commission to determine.

Mr. Chairman: It is certainly not clear in Bill 154 or, I suggest, the amendments I have seen so far whether an outside comparison would be allowed.

Mr. Ward: How would you achieve the intent under the example Mr. Stevenson used?

Ms. Gigantes: What intent?

Mr. Ward: His example was dealing with the 10-and-under.

Ms. Gigantes: With child care and with domestic work. Right.

Mr. Ward: All right.

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Mr. Stevenson: Okay. Let us go a little further then. We have one

employee in the home doing some domestic work and some child care work, and that employee is not happy with the pay level being received. What redress is there for that person under your amendment?

Ms. Gigantes: If the amendment that eliminated the exemption for a place of employment with fewer than 10 employees were in effect, and if the rest of the government legislation stood as it was, then there could be a complaint made by the employee that the work being done was not being valued adequately. In fact, it would be difficult to show sex discrimination in that particular situation, because there would be one employee, but the commission might make a determination that employees in that category of work were being underpaid across the province by everyone. It might not be true in all cases. Some people do pay their domestic workers quite well; other people do not.

Mr. Stevenson: Did I miss something there? How would you address that situation?

Ms. Gigantes: By complaint, first, and a determination by the commission about whether an outside comparison could or should be made. To me, it does not matter whether you have 100 employees or one employee doing a job; the question of whether that work is being valued fairly is one that this legislation should permit to be explored, period.

Mr. Ward: So it is not an issue necessarily of whether the pay levels are restrained as a result of gender discrimination?

Ms. Gigantes: I wonder how many men you would find ready to do domestic work of a nature that has been described to us at the pay levels that are often associated with that work. To my mind, it is a question that needs examination. Certainly, as a separate issue, we have raised that, as a party in the Legislature. We feel there are not adequate protections about the hours worked and the kind of work that goes on in many situations that domestics work in. We pressed both the Conservatives and the Liberals to try to do something about that by way of employment standards.

Mr. Ward: Just as a comment again, I think the issue that is being referred to--I tried to enunciate it this morning, obviously not well enough, and I will try again--is that pay equity legislation deals with an issue as it relates to compensation practices, the issue of gender-based differences in pay levels.

I think we hear the issue that Ms. Gigantes is raising, as she consistently does. It is an issue that a lot of us, I am sure, would agree has a level of importance attached to it but, in fact, it is a different issue: the difference of pay levels, the appropriateness of minimum wages and all that. That is why I have a lot of trouble dealing with amendments that relate to those issues that I believe are separate and apart from the issue of gender-based pay discrimination. It is not that they are not issues and it is not that they are not important issues, but they are different issues.

Ms. Gigantes: I believe they are not different issues at all. I think that whenever you have children to be looked after or housework to be done, it is women who do it, and they do not get paid for it.

Mr. Ward: I think they are different issues when you talk about a workable piece of legislation to achieve pay equity in this province. If you look at your amendments, particularly as they relate to the 60 per cent and 70 per cent and the gender predominance, and you replace all the mechanisms for

achieving pay equity with equalization of base entry rates, comparison of benchmark jobs, comprehensive or partial job evaluations and increasing minimum wage rates, you are dealing with broader issues relative to the labour force in Ontario and not dealing specifically with a workable way to achieve the elimination of gender-based pay discrimination practices.

Ms. Gigantes: It is not suggested by that amendment that any or all of those will satisfy the requirement under this legislation to achieve equal pay for work of equal value. What is suggested is that these are steps that can be taken in order to reach that goal.

Mr. Ward: Likewise, your amendments do not provide any standard for the achievement of pay equity either.

Ms. Gigantes: I believe they do. The amendments you have from the New Democratic Party say that where positions are of comparable skill, effort, responsibility and working conditions, then this shall be compared, their pay levels shall be compared and their pay levels shall be adjusted. If that is not a mechanism, I do not know what it is. To me, it is a mechanism.

If I could say another word on the question of domestic work, it seems to me to be absolutely reasonable that an equal pay commission should have the mandate to take a look at the pay levels that domestic workers have in Ontario. If the commission determines that the minimum wage standard for domestic workers is ridiculously and offensively low, which it is because we have no enforcement mechanism, no legislation guaranteeing the hours of work for the pay levels we set as minimum for domestic workers in Ontario, then it may well be that the commission will wish to recommend a change in our labour legislation as it addresses the wages of domestic workers.

To my mind, that would be very reassuring and it might finally bring about government action on this subject. I would be quite happy to see it examine that question. I see no difference at all between the situation of day care workers, to whom there is no male comparable, who get less than zoo-keepers, as we all know, and the position of somebody who is doing domestic work in a private home. I really see no difference. The situation can be just as discriminatory.

I would call upon the commission to carry out its duties in examining a situation in which all female employees feel that they are suffering wage discrimination because they are female and doing female work.

Mr. Stevenson: I do not doubt the fact that there is a problem there. It is a question of how to address it and the method by which you try to go about solving that problem. At times we are getting somewhat confused—or maybe it is only me who is confused—as to the degree of systematic pay discrimination there is in the work place.

I go back to the example used this morning of the parking lot attendants versus the telephone switchboard operators. I would not suggest for a minute that part of the pay difference may well be related to systematic gender discrimination. However, it is interesting that we bring up this subject of pay difference today, when, for example, this morning it was pouring rain and the parking lot attendants were out there in very miserable conditions trying to do their job.

They also have to contend with MPPs who want to bring their car into a different parking lot to leave it for 15 minutes while they run in to check

something with another member. Then four hours later, they come back for their car while they have been taking up someone else's parking place. There are various other hassles that they have to put up with.

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I suspect that part of the difference relates also to job conditions and other factors involved in evaluating the two jobs. I have not heard--maybe it has been discussed in Bill 105 or in other committees--whether there was any indication that, in fact, there was sex discrimination in hiring for those two jobs.

Ms. Gigantes: If there was sex discrimination in the hiring of switchboard operators, it seems to be fading. More men are becoming switchboard operators at Queen's Park. I hit male voices on the line very frequently. If you think the working conditions of the switchboard operator are pleasant these days and if you think MPPs are easier to deal with on the telephone than they are in a parking lot, I think you should think about it.

Mr. Stevenson: Yes, I am aware of some of those problems as well. I am not trying to say that job conditions is the only issue that has to be established.

Ms. Gigantes: You might very well find, Mr. Stevenson, that if we made a determination that there was sexual discrimination in pay between those two jobs and we subsequently adjusted the pay of switchboard operators, the people who hire parking lot attendants would suddenly find they might as well hire women. The achievement of equal pay, based on the valuation of a job, will lead to more equitable hiring practices. Employers, such as the government of Ontario, will not longer see a great benefit to be had by job segregation.

Mr. Stevenson: Have there been any indications of women wanting to transfer to parking lot attendants and that option not being available to them?

Ms. Gigantes: I have no idea. You might look into it.

Mr. Stevenson: As I say, I have not been involved in these discussions in other committees. It is a subject I was made aware of this morning.

Ms. Gigantes: I do know where there are comparable kinds of jobs in other areas of work that women have tried to apply and all kinds of measures, which have been found to be discriminatory under the human rights legislation of this province and other provinces, have been used to impede women's entry into the higher-paid male jobs. That goes from bus drivers in municipal bus organizations to police officers, you name it. Where women have attempted to join the higher-paid, male-dominated jobs, all kinds of barriers have been erected in their paths.

Perhaps one of the ways of convincing employers, including municipalities and provincial governments, that job paths should be open equally for women is to make sure that women are going to get paid for doing the value of their work in the work paths they have been allowed, which have been traditionally female work paths. It removes the incentive for employers to keep those job types segregated by sex.

Mr. Stevenson: I am very much aware of that. That really was not the

reason why I raised the question. It seemed to me that it was raised as a very clear indication of systematic, gender-biased pay discrimination this morning.

Ms. Gigantes: Yes, I believe it to be.

Mr. Stevenson: At the outset, I said I do not doubt that is part of the problem, but I am still not convinced that it is the only issue that is involved in that pay difference.

Ms. Gigantes: I would agree with you.

Mr. Stevenson: As far as the issue of getting women involved in other job lines, other occupations, other professions is concerned, the studies have indicated that may well be the best way of dealing with the problem and, over time, have a greater impact than this legislation is likely to have in closing the gap.

Ms. Gigantes: We have seen no evidence of that in 20 years, as you are aware. As women have become increasingly educated and increasingly forward in seeking other types of work, we have seen no evidence that the wage gap is closed. In fact, the latest statistics from Statscan indicate that the wage gap is widening again.

Mr. Stevenson: There are many example of that occurring, and one only has to look into many of the professions to see that it is occurring. There is certainly no shortage of examples to support what I am saying.

Mr. Chairman: Before you go on, I believe Mrs. Caplan had a supplementary. Then I will go back to you.

Ms. Caplan: Earlier today, Ms. Gigantes said she wished to raise several items, including the timing and phase-in. The committee has been presented today with substantial packets of amendments along the lines of, "If we are going to make progress and get on with that."

Without cutting off this most interesting debate on the fundamental principles, on which I think we have had extensive discussions and representations to the committee, and I certainly have no objection to listening to that, I wonder whether we could move on to the other issues Ms. Gigantes wanted to discuss before this committee.

Then, if it is possible and time permits, perhaps we would have some time to adjourn a little early today so that we would be able to examine all these amendments and be prepared to discuss them and get on with it tomorrow. If that is acceptable to the committee, we might look at that as a time line.

 $\underline{\text{Mr. Chairman}}$ : My interpretation of what the committee wanted to do is to exhaust the main sections of the bill that you wish to cover before we go into clause-by-clause. That is not in any way with the intent of cutting off discussion on clause-by-clause. I thought if the basic principles were at least on the table in a fundamental sense, we could move along farther.

I have no hesitation about going back to Ms. Gigantes, if that is her wish. I give the same opportunity to the government members, if you wish to discuss any of your amendments as well. We can do that after I finish with Mr. Stevenson.

Mr. Stevenson: I was about to move on to some of the other issues,

basically the issues of definition. It matters not to me whether we handle some of those now or after the questions on phase-in. Before we get on to clause-by-clause, there are some questions of definition I would like to have answered.

Mr. Chairman: Let us go into them now, unless there is any concern about that. All right, let us go into your questions on definition.

Mr. Stevenson: I cannot recall the exact title of the group now, but the representatives from the food service sector did raise questions of franchises and franchisees and how that would be handled within a geographic area and beyond a geographic area and so on. Could you explain that whole area and what amendments you may have brought forward to clarify it, if you have any?

Mr. Ward: In terms of substantive changes in the amendments, there were not any, because they were not necessary. We considered the whole issue of franchises and everything else. Where some of the confusion may have come in was in terms of the definition of "employer," which was the common law definition. We did try to clarify that and enunciate that it is the person who is in control of wages.

In the situation with a franchisee in a geographic area, a franchisee is for all intents and purposes the employer. He may have four franchises, in which case the employees of all four are covered. There may be circumstances where there is a company-owned outlet of a franchise, in which case the parent company is in control and the bill applies that way. Although there were some references to potential problems with franchises, in reality it does not work that way. Most franchises are distinct, separate corporate identities. They may have consistency in terms of their product and various quality controls, and at times there may even be a central advertising function or whatever, but the wages of those employees are under the control of the franchisee.

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Mr. Chairman: Can I pursue this for a moment because it is a question that has been disturbing me as well. Let us pick one we are all aware of such as the McDonald's franchise. It is conceivable that you could have the home office control a certain number of franchised outlets, say 20 or whatever. Would those all be in one unit for the purposes of this bill?

Mr. Ward: If they were company-run.

Mr. Chairman: Irrespective of their geographic location?

Mr. Ward: No, within the geographic location. Seeing you have used the name, maybe the best way to do it is by way of example. In Hamilton, most of the McDonald's franchises are owned by a single individual. They are within a geographic region and he owns four stores. Therefore, the employees of all four are covered as an entity under the bill. Now if the parent company owned and operated two within that geographic region, it would be covered by the bill within those two establishments.

Mr. Chairman: What if these two outlets are in Hamilton and their home office is in Toronto? The bill makes reference to regions.

Mr. Ward: The employees within the geographic area would be covered. They would not be rolled in with all the employees in a separate geographic

region. In other words, the employees in Toronto would not be dealt with in the same way as the employees in Hamilton, but all the employees in all the company-owned establishments in Hamilton would be treated the same.

Mr. Chairman: Can I pursue it for a moment? There are a couple of other possibilities I want to pursue because I have had these questions asked of me. What would happen in a case where there was a company-owned franchise in a region and there was also an arm's-length franchise owned by, let us say, Mr. Charlton.

Mr. Ward: They would be separate entities.

Mr. Chairman: Even though they were essentially the same business?

Mr. Ward: If Mr. Charlton had control of the wages of the employees of two franchises in the city of Hamilton, then he would be the employer and he would be in control of the compensation of those employees. They would be dealt with as an entity for the purposes of the act and the employees of the company-owned one would be dealt with separately.

Mr. Chairman: Okay. There is a very major Canadian corporation known as Dylex. Dylex owns a large number of different male and female apparel operations. It appeals to different economic groups. Some of them are in sportswear and some are in more formal wear-upper, middle and lower level-with different conditions in each of those stores. How would a company's operations like that, with hundreds of outlets across Ontario and perhaps as many as a dozen or so in a medium-size community, be interpreted for the purposes of the bill?

Mr. Ward: Maybe I should let Ms. Herman answer some of this, but in the Dylex example there are, in fact, separate companies set up within the umbrella group and those separate companies do have control of the wage practices. For instance, Thrifty's may not be compensated or under the control of the same employer as the employees in Harry Rosen Men's Wear would be, but perhaps Ms. Herman wants to elaborate on this.

Mr. Chairman: However, I think each of those would be traceable in some fashion back to Dylex.

Mr. Ward: Dylex would not be the employer under the definitions.

Ms. Herman: My understanding of the way Dylex is set up is that each of those separate companies hires and fires and takes care of the recruitment of employees, supervises their work, pays them and decides at what wage rates they are set. They may purchase some services from head office, such as bookkeeping, but that is done on a contractual arrangement between those companies and head office. In terms of who controls the work of those employees, it happens at the individual company level. It does not happen from the central head office of Dylex, so the individual companies would be the employers of the employees within those companies.

Mr. Chairman: Can you then use that same explanation in response to the question that was raised by the deputants from General Motors? They specifically talked about a General Motors assembly operation. Perhaps in another municipality in another area there would be a parts-manufacturing operation that is competing in an entirely different area of the automotive business and is ostensibly at a much lower wage scale because of the

competitiveness of that other market. How would this bill be interpreted in terms of the application in that circumstance?

Ms. Herman: If they are in separate municipalities, then they are separate establishments in any case. If they are in the same municipality or geographic division, then it would depend on whether there was some central control over the employees or whether the control over the employees was separate in the assembly operation; whether the hiring, firing and day-to-day supervision and payment was done in the assembly operation separately from the parts manufacturing, or whether it was all done by one employer for the two divisions. Of course, only if they were in the same municipality would they then be within the same establishment, so you would have to know who is in control of the employees within those two operations to know who the employer is.

Ms. Caplan: As a supplementary, in that situation, would the number of bargaining units—likely there would be separate bargaining units for the assembly plant and the parts division—also come into play, because the legislation states that each bargaining unit will have its own plan? You would have a problem only if there were no comparison groups within that unit. Would that also not ameliorate the impact on that type of employer?

Ms. Herman: That is correct, and in any case, as long as there are male comparable groups within each for the female classes, there is no requirement to go into the other division in any case. As long as there is a male comparable group within it, the employer never has to go outside of it.

Mr. Baetz: By way of supplementary, I was going to say that I have trouble with the fact that the definition of "establishment" does not include a functional as well as a geographic element and does not clearly define it as functional differences. With some of the people who came before us, I think there were cases where the same employer within the same geographic unit was very clearly carrying on very different functions.

VS Services was one example. It caters to hospitals, but the same company with the same direction, I gather, provides food for restaurants or has its own fast food outlets. It is the same employer with very distinct and different functions within one geographic area. I get the impression that the way the legislation is written now is very unclear about that, or am I missing something?

 $\underline{\text{Mr. Ward}}$ : I do not think you are missing anything. I think it is fair to say that the definition of "establishment" does not allow for functional differences. I really question what you propose to achieve by putting in the functional exemptions.

Mr. Baetz: I am not talking about--

Mr. Ward: If you look at the purpose of the bill and you want to propose that there be some kind of separation of functional differences-

Mr. Baetz: I am not talking about exclusion. I am simply pointing out that we should recognize--

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Mr. Ward: But if you break down an establishment into functional categories, where are you going to get your comparisons? Really, there are not

going to be any. The problem with that, and it is a point that was raised a lot, is the solution really results in legislation that is totally ineffective in terms of redressing the problem the bill tries to redress.

I can foresee not only where you are going to have discriminatory pay practices, but also that you will start segregating the male and female employees on a functional basis. If the purpose of Bill 154 is to address so-called occupational segregation, which it is in terms of women's work, and you start putting in functional definitions of "establishment," not only are you not going to redress gender discrimination but you are also going to institutionalize a problem to a greater level than it already is.

Mr. Baetz: I think I will be back on this question. I am still not quite satisfied with that.

Mr. Barlow: Following Mr. Ward's logic, it cuts both ways. You could just as easily say the functional aspect, if it is not looked at, is going to leave an interpretation of segregation. This functional aspect is quite important and bears a lot of thought. We are quite a way away from establishing the establishment, as Mr. Baetz said. We could probably get back to that but it is probably something we should be prepared to address as we get to a debate on that clause. There is a strong concern that everything has to be looked at. It is very difficult. This is a brand new piece of legislation, as we know. We do not want it to be trial and error; we want it to be right the first time, as it should be.

Mr. Stevenson: To carry on generally the same line of questioning, refresh my memory as to what stops existing companies—I believe this came up with some of the big merchandising firms where they had a warehousing unit and a sales unit in the same municipality, sometimes almost in the same building and maybe in the same building, currently with pay rolls being handled by one company. What stops that company from fragmenting that company and going a Dylex route to get away from some of these comparisons?

Ms. Gigantes: Nothing.

Mr. Ward: If you are looking at a functional definition of "establishment," it would simply be an easy process of, I suppose, of getting your corporate number and saying, "The warehouse is a separate company," and leaving it at that. I do not believe the Dylex example is an example of a fragmented central operation. I think those are set up as separate companies with completely different administrative structures.

Mr. Stevenson: Possibly I used a poor example, but do you understand what I am getting at?

Mr. Ward: I know what you are getting at, but I do not think that is going to be achieveable through that mechanism.

Ms. Caplan: I would like to reinforce what the parliamentary assistant has said as to why anyone would want to set up separate personnel branches and separate pay branches that would be inefficient and would probably cost more than the implementation of pay equity. To me, it would not make any kind of business sense to have a duplication of all kinds of services to avoid—it would end up costing far more than just making the adjustments required in this act. I do not think it makes good business sense to suggest

anyone is going to go to that kind of extreme to avoid implementation of the act.

Ms. Gigantes: We have had several employers offer to do it.

Ms. Caplan: I am talking about responsible business people who are not going to look to incur additional costs and run an inefficient operation when they have a reasonable piece of legislation that will allow them to run their businesses effectively and efficiently. It does not make sense for them to do something that is going to produce additional costs.

Ms. Gigantes: Let us look at the discussion that has been going on here, generated by our Conservative friends. We are having a discussion around the fact that this bill should limit comparisons according to function. The effect of that would be to take away any disincentive for employers to break down their component parts into separate businesses. You would do it for them. They would not even have to pay to set up a new corporate title and have a new personnel manager for their warehouse. You would make sure that the women in the office never had their work compared to the stockman on the floor in the warehouse, and you would do it by function. You would say, "One is a different function from the other."

You are suggesting we put that in this legislation? The next worse step is the situation that exists in the legislation proposed by the Liberals, which as Mr. Stevenson points out is a situation where there is nothing to prevent a corporation that is determined to get around the question of paying its female employees equally from breaking up its component parts into separate corporate entities. We have had it proposed by no less an outfit than General Motors of Canada Ltd., that it would make sense to do it. They said they would do it.

Mr. Ward: I do not think that was their testimony.

Ms. Gigantes: Their chief personnel officer was before us. That is what he said to us.

Mr. Stevenson: You are reading a great deal into our line of questioning.

Ms. Gigantes: One has to.

Mr. Stevenson: I think it is a matter of none of us being lawyers or experienced personnel officers in large corporations and we are faced here with a rather complicated bill some of us do not have a long experience in dealing with. We have a number of amendments in front of us and I think it is just a matter of trying to understand the situations that exist out there in the marketplace and seeing how they will be affected by various changes that might be made to the bill. I think our line of questioning means no more than that.

Mr. Ward: I want to come back to the point Ms. Gigantes just made, the suggestion that it is simply a case of assigning a separate personnel manager to the warehouse of a larger corporation.

Ms. Gigantes: A separate corporate entity.

Mr. Ward: That is the position you just stated.

Ms. Gigantes: They said they would set up separate corporate entities.

Mr. Ward: You know it is not that simple. There is a big difference between just hiring a separate personnel manager and virtually divesting a complete function within your corporation. I believe that is the extent of the difference.

Ms. Gigantes: Excuse me. What we had suggested by GM was that it would separate its warehouse from its office.

Mr. Ward: What we had suggested by one individual was that he could separate his warehouse from his office by merely getting a new corporate number. In the discussion, he conceded that would not be effective or achieve the separation you state.

Ms. Gigantes: You tell me why it would not.

Mr. Ward: Because he has not changed the definition of the employer. They are still under the control of the same individuals. They are still covered as an entity.

Ms. Gigantes: Why have they not become like Dylex?

Mr. Ward: That was not what he was proposing. He was not proposing a complete and separate entity.

Ms. Gigantes: Yes, he was.

Mr. Ward: I do not think he was.

Ms. Gigantes: Indeed he was. He was as clear as day on that.

Mr. Chairman: Was he not using that as an example?

Ms. Gigantes: Yes.

Mr. Chairman: I do not think he was suggesting he was going to do it.

Ms. Gigantes: Oh, yes. He said, "If you go ahead with this legislation as it stands now, what we will do, what people in our position will do as employers, is incorporate separate functional corporations."

Mr. Ward: So GM is going to franchise its operation.

Ms. Gigantes: That is what he said. I see no reason to disbelieve him. I have no doubt either that the situation with Dylex has a lot to do with the way labour legislation is written and the fact there are certain benefits that Dylex feels, as a holding company, when it has a great variety of separate entities, as does VS Services and Cara Operations.

If we are going to have legislation that allows employers to use that kind of route to escape, then let us all be frank about it.

## 1530

Mr. Ward: It would probably be a lot cheaper for them to make the pay equity adjustments.

Ms. Gigantes: There is some amount of religious fervour involved in all this, too.

Mr. Polsinelli: It seems to me that our friends to the left cannot selectively choose what representations they will believe from the business community. If they believed everything the business community has told this committee, I am surprised they are still supporting this legislation. I propose that the idea of establishing separate corporate entities to avoid the impact of this legislation is perhaps a simplistic notion.

Ms. Gigantes: Extremely.

Mr. Polsinelli: What you have when you set up a new corporate entity are new legal fees, new accounting fees, new tax implications and new personnel responsibilities. For the smaller corporations and companies, those additional expenses would be such that it would be much cheaper to comply with the Pay Equity Act.

For the larger corporations, you would still have the additional groups in there which would allow you to have the comparisons. When those entities which appeared before us suggested those methods or alternatives for avoiding the impact of the act perhaps they had not thought out all the implications.

Ms. Gigantes: It is quite easy to look after the problem by amendment if it concerns you.

 $\underline{\text{Mr. Polsinelli:}}$  The problem does not concern me, Ms. Gigantes. I am saying that I think when they apply good corporate business sense to the situation, they will realize that the most expedient and best way of dealing with the situation is to comply with the act.

Mr. Stevenson: Could I move on and get out of that discussion here? I want to come back, briefly, I hope, to the McDonald's situation, for example. If, in one municipality, you have an outlet owned and operated by a company and a franchise a few blocks away, for purposes of comparison it is conceivable that people in the company-operated outlet could be compared with employees in head office, in some way or other.

Mr. Ward: Only if they are in the same geographic area. For instance, of the three McDonald's franchises in Uxbridge, if two were owned by the Stevensons--

Mr. Stevenson: No, let us stay in Toronto.

Mr. Ward: If the Stevenson family owned three franchises in Toronto, and each one of those had five employees, all 15 of those Stevenson McDonald's employees would be covered by the pay equity plan.

Mr. Stevenson: I understand.

Mr. Ward: If there were 25 employees working in franchises owned and operated by the company, they would be covered by the McDonald's plan within the geographic area.

Mr. Stevenson: Could no comparisons be made outside the Stevenson-owned franchises with the company-operated franchises?

Mr. Ward: That is right. The Stevenson employees would not be compared to the McDonald's employees.

Mr. Stevenson: What is the likelihood of job comparisons being made of the franchise to the corporation head office within that municipality?

Mr. Ward: I am sorry?

Mr. Stevenson: What is the likelihood--

 $\underline{\text{Mr. Chairman}}$ : Sorry, we were talking about ownership here, believe it or  $\overline{\text{not. We were}}$  trying to determine who owns what. Go ahead.

Mr. Stevenson: What is the likelihood of a job comparison being made between employees in the outlet versus employees in the head office of the company involved, if the two are in the same municipality?

Mr. Ward: They can look for comparisons within that context.

Mr. Stevenson: That could create some interesting situations.

Mr. Ward: I am not saying the comparisons exist, but I am saying, in terms of the coverage, it is allowable.

Mr. Stevenson: Whereas corporate outlets or owned outlets in Hamilton could not make that same comparison between the outlet and the head office?

Mr. Ward: That is correct, again with the standard proviso that the company can agree to make comparisons across geographic divisions with the employees--

Mr. Stevenson: Okay. Getting on to another question, for my own information, when the Council of Ontario Construction Associations group was in, some question was raised about whether a job site is, in fact, an area of work. Let us say that the company's head office is here in Metro or in one of the member municipalities of Metro, and it has a job site in that same municipality. It has another crew working in Uxbridge or Guelph. What sort of complications does that bring about?

Mr. Ward: I think it is the same as the McDonald's example. If the office is in Toronto and there is a job site in Toronto, then that is where the comparisons exist.

Mr. Stevenson: If there were some sort of suboffice in Guelph, for example, there would be no comparison between a suboffice and head office, but there could be a comparison between the job site in Guelph and the suboffice in Guelph?

Mr. Ward: Right.

Mr. Barlow: What if the head office is in Toronto, the one crew is working in Toronto and another crew, still with no suboffice, is working in Guelph where there might be a different pay structure, as there is in different geographic areas? When it comes to the construction industry, it has province-wide bargaining and it has different pay structures. In some cases, Ottawa might pay differently from Toronto for a carpenter or a bricklayer or whatever. In some cases, there is a few dollars' difference.

Mr. Ward: If you are talking about the differences in pay levels between carpenters on the job in Ottawa and carpenters on the job in Toronto,

I do not see how any of this enters into the legislation. Number one, there are no comparisons. Number two, they are male-dominated categories. Number three, onsite, they are covered by equal pay for equal work if they are performing the same function. I know what you are saying theoretically, but I do not see how it would ever be a problem in practice.

Mr. Barlow: All right, but let us say that there is no job under way for the Toronto construction firm in Toronto. That is probably a poor example. It would be a better example to say there is no job in Cambridge for the contractor so he is in Toronto where a higher rate is paid. His office staff is still back in Cambridge. If you are going to start trying to compare male versus female or office versus site workers, it bounces all over. In different parts of the province, one contractor--

Mr. Ward: The comparisons exist within the geographic division.

Mr. Barlow: Only within the geographic division?

Mr. Chairman: Can I extend the question a little further? I am troubled about something as well. You have an onsite construction worker who is paid, for the time he is working, a wage that reflects the conditions of that job, including seasonal employment. What COCA was concerned about, very simply, was to take ostensibly a female secretary from the field office and compare her with the onsite construction worker whose pay reflected an entirely different set of conditions. Can you give COCA the assurance that type of comparison is not going to be made and will not result in the secretary's wage being influenced by the seasonal work of the construction worker? That is what they are asking for.

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Mr. Ward: I cannot give anybody the assurance that--

Mr. Charlton: You have given him the answer to that one already. Just make sure your office is in the same location as the site, and you will have no problem at all.

Mr. Chairman: Surely, that is not the intent of this legislation.

Mr. Ward: Mr. Chairman, I do not think that was even the question you asked. I think you were saying to give some assurance that people cannot try to make a job comparison between their employees in a given geographic area. I may not happen to agree with the analysis or whatever that was done in the example presented, but far be it from anyone to say they could not or should not make those comparisons. I have some very great reservations about a lot of that brief, but--

Ms. Gigantes: If that is the way (inaudible) in the brief, who are we to say no.

Mr. Ward: It was their position that they made the comparison, it was their position that the positions were comparable and it was their position that that is what the adjustment would be.

Mr. Charlton: Go for it.

Mr. Chairman: That will give them a lot of relief.

Mr. Ward: Mr. Chairman, there were a couple of aspects to that. The

one comparison they made had a complete disregard of the historical incumbency and was totally unnecessary but, again, they made it in terms of their job evaluation. They weighted their job evaluation and factored it the way they thought appropriate. If their position is, "This is the comparison we did; this is the comparison we are prepared to defend before the commission," and that is how the wages came out, fine.

Ms. Gigantes: If that is the way they want it.

Mr. Ward: It does not necessarily mean I think it was proper.

Ms. Gigantes: May I suggest a five-minute break?

Mr. Chairman: It might be in order. Would you care for a five-minute break?

Mr. Ward: Yes.

Mr. Chairman: Let us take a five-minute break, and then we will come back. Mr. Stevenson will still have the floor.

The committee recessed at 3:45 p.m.

### 1608

Mr. Chairman: Members of the committee, I believe we can get under way. We have taken a little more than the five minutes we had decided to take. At the time we broke for a brief period of consultation, I believe Mr. Stevenson had the floor and was pursuing the issue of definitions. I will give the floor back to you, sir.

Mr. Stevenson: I have some further questions, mainly for my own clarification, to understand how some of these things will be handled. We had some discussion of the definition of "compensation," how that would be handled in various situations. The one issue that came up on a few occasions was sales people being paid on commission. How is that going to be dealt with in the job comparison situation, or part base salary and part commission and that sort of thing?

 $\underline{\text{Mr. Ward:}}$  It is my understanding we are bringing in an amendment to clarify that, or I am so advised.

Mr. Stevenson: You do not care to discuss that further at this time?

Mr. Ward: I do not think so, because in fact we tabled an amendment that we are really not satisfied with at this point. I guess we did not. We are working on one, a rough copy.

Mr. Barlow: Draft number one.

Mr. Ward: We have an untabled amendment on that.

Mr. Stevenson: So you do accept the fact that some of the concerns were real and you are attempting to address that situation.

Mr. Ward: Yes.

Mr. Stevenson: Might you explain in a little more detail to me what

exactly the problem is as you see it? We will then hear at some later point about how you hope to deal with the problem.

Ms. Caplan: Which clause are we on?

Mr. Stevenson: How compensation comes in. How being paid by commission-sales people--

Mr. Ward: I think I will let Jane Marlatt respond on some of this.

Ms. Marlatt: Compensation would include commissions. We are drafting an amendment to the definition of job rate so that where compensation is paid under a variety of kinds of salary systems, we will have definitions that apply to those various situations. Compensation was intended to include, as it says here, salaries, wages and benefits. Some of that compensation would be in the form of commission.

Exactly how that would be treated, we are trying to cover under a definition of job rate. We found the definition of job rate in the act very specific to one set of salary administrative systems. We are trying to take into consideration a more comprehensive definition of a variety of different compensation or salary-and-wage setting systems.

Mr. Stevenson: Just going through the researcher's list here of some of the thoughts brought forward by the various witnesses, we also got into some discussions on such things as protective wear in various types of jobs and shift premiums, those sorts of things. How are those handled, particularly the ideas of protective clothing or articles of some type or other that might be used on job sites? Is that likely to be included?

Ms. Gigantes: Do you mean that if a construction worker should use the hard hat off the work site, is that a benefit? I have not quite got the question.

Mr. Stevenson: No, that was not quite--

Mr. Ward: It was not the intention to include those.

Mr. Stevenson: There was also some question—I do not see it here—as to whether benefits would be included at actual cost. I assume that relates back to the employer's share. Am I correct? I am not even sure I can word this question properly. There is a question of benefit cost versus the total package of the benefit and how that is included in the various types of jobs.

Mr. Ward: The benefits are calculated at cost to the employer.

Mr. Stevenson: Okay. I think that is all I have for the moment.

Mr. Chairman: If there are no other questions regarding definitions or areas of explanation of the bill--I am sorry, Mr. Baetz.

Mr. Baetz: I am just wondering--perhaps this is not a question of definition, but I would look forward to getting some more information on this whole question of minimum incumbency. What constitutes a minimum group? I think there is a government amendment that deals with that, but--

Mr. Ward: The government amendment is that incumbency is one.

Mr. Baetz: Incumbency is one?

Mr. Ward: That is right.

Mr. Baetz: Is this the time, Mr. Chairman, to discuss this issue? I think we can call it an issue. I would like to ask a few more questions about it.

Mr. Chairman: Be my guest.

Mr. Baetz: I have just been told by the parliamentary assistant that a minimum group--I would like to underline that word "group"--is one. I have always thought that a group means certainly more than one, possibly even more than two. Two is a pair, three is several.

Mr. Chairman: Three is a trio.

Mr. Baetz: Three is a trio, but a group certainly suggests more than one, possibly more than two. Maybe around five might be regarded--I know if you talk about a gaggle of geese, you have an idea of how many there are of those. Quite seriously, how can we really, honestly refer to a group as a minimum of one?

Mr. Ward: The comparisons within the bill are comparisons of job classes; they are not comparisons of individuals or of workers. The reality is that a job class could consist of just one position. You move to an incumbency level—and I thought we had this discussion this morning already. The one example would be in the Manitoba legislation. We looked at this in formulating the legislation. What happens is you get into circumstances, for instance, within a hospital, where you might have 3,000 or 4,000 workers, theoretically, or a couple of thousand workers. If you have an incumbency limit, say, of five or six, or whatever number you choose, in terms of these job class comparisons, you effectively eliminate comparisons in their entirety.

We talked this morning about coverage and the groups that were missed as a result. For instance, an incumbency level of five would eliminate far more women from the availability of any job comparisons than the 10-and-under exemption. It just is not workable.

Mr. Baetz: I would not argue for a minimum group of 10 or 15. If it were as high as all that, I could appreciate the problems that you have forecast here, but surely when you get down to looking at positions with only one or two, are you not more than offsetting any other possible administrative difficulties that you might have foreseen with a somewhat larger group?

Mr. Ward: I do not think so. When you are comparing job classes--and I am reminded that the example in the Manitoba legislation was a facility with 5,000 employees and with a minimum incumbency level of five. There were zero comparisons available. Five thousand people were eliminated in one establishment as a result of--

Mr. Baetz: That sounds awfully high.

Mr. Chairman: It would seem that would be a very highly unusual situation.

Mr. Baetz: Five thousand employees--that you would not find a group of five for comparison purposes.

Mr. Ward: I am sorry; the incumbency level there was 10.

Mr. Baetz: Okay. Let us assume that is maybe too high, but let us settle the difference at five as between one and 10.

Mr. Chairman: That is about halfway.

Mr. Baetz: Not quite. In terms of people, you cannot cut somebody in two.

Mr. Chairman: Right.

Mr. Baetz: I maybe do not have the same scepticism about employers that our colleague Ms. Gigantes sometimes has, but I think the delegations that came here, were there not some reservations expressed that if you are dealing with only one, some employer can start playing games with that one person. If that person happens to be a woman, it creates problems. It means a pay equity plan. Get rid of her. Put in a man, then it is settled.

## 1620

Mr. Ward: It is the same argument if you can say you can have up to four.

Mr. Baetz: No, but in practical terms it is just a little more difficult to do that. It is just that one. I have problems with that, but maybe we can get back to that when we get to the detailed discussion on the amendment. In the mean time, I will, of course, take under consideration all of your enlightened comments on this and see whether I can be persuaded your way, but I must, at this moment say I have a problem with that.

Mr. Chairman: Anything further? If there are no further questions at this time, I will go back to Ms. Gigantes. Do you want to discuss any further amendments that you have in the groupings that we discussed earlier?

Ms. Gigantes: The next group of amendments that I would have proposed discussing as a block would relate to the timing of the legislation as it would be implemented. If the committee wants to start out that discussion now, I am quite happy to do that.

Mr. Chairman: There was some interest in having our meetings come to a close at 4:30 and it is about 24 minutes after now. I know that cuts it short but I will give you the floor first thing tomorrow, if that is the wish of the committee. What do you want to do? You can introduce it now but we do not have a great deal of time if it is your wish to close at 4:30. We had agreed earlier we were going to finish at 5:30.

Ms. Gigantes: My personal point of view is that nobody is prepared to vote on amendments in this committee today, so I am prepared to come back tomorrow morning in the hope that people are ready to start the work. I understand that we have not had much chance to look at each other's amendments and if that is what is causing the difficulties here, let us confront it; let us go and read amendments.

Mr. Chairman: All right. The agreement we had this morning was that we would review in groups what we were doing just at this time, which was to go back over your amendments. I gave the Conservative Party and also the Liberal Party the same opportunity. The Liberal Party did not wish to take advantage of the--

Ms. Caplan: We like the bill.

Mr. Chairman: You like it just as it is. You have no amendments you wish to speak to.

Ms. Caplan: Technical perhaps, but not fundamental.

Mr. Chairman: If they are not substantive--

Mr. Ward: My boss is here. She is really well travelled.

Mr. Chairman: I thought she was a new member of the press who had joined us. In any event, I cannot tell you when we will be ready to vote because the chairman is never told those things, but I will try to keep it moving as quickly as I can. What is your wish with respect to the phasing of the bill? Do you want to introduce that now or leave it until the morning?

Ms. Gigantes: I would be just as happy to leave it until the morning and let people read the amendments. I can suggest to people that on the question of timing, the sections we will be addressing are section 9 and subsection 12(4).

Mr. Chairman: Ms. Gigantes, in the earlier amendments that you were talking about, you outlined for the committee's information sections 17, 7(5) and 12(5).

Ms. Gigantes: Yes.

. Mr. Chairman: Would you not also have to make reference to subsection 2(2)?

Ms. Gigantes: I will check that for you immediately.

Mr. Chairman: Clause 2(1)(b) as well, I guess. It is a short section.

Ms. Gigantes: Yes, that is correct.

Mr. Chairman: Could you add that to the list that Ms. Gigantes gave us earlier, then it would be sections 17, 7(5), 12(5) and section 2, and some of the related subsections in that area.

Ms. Gigantes: Right.

Mr. Chairman: All right. If there is nothing further to come before the committee at this time, then I will look for a motion to adjourn, and I have one-I am sorry.

Mr. Ward: Just a second.

Mr. Barlow: The accord at work again, I see.

Mr. Chairman: Is that what that is? I thought it was an innocent conversation that was going on between two members of the committee.

Ms. Caplan: It looks like that to me, Mr. Chairman.

Mr. Chairman: It looks like that to me.

Mr. Polsinelli: You can never tell at a distance, though.

Mr. Chairman: One never knows where these kinds of things may end up going.

Interjection.

Mr. Ward: I think you should adjourn.

Mr. Chairman: I have a motion from Ms. Caplan to adjourn, and that is concurred in, until 10 tomorrow morning.

Interjection: We cannot discuss it; he will rule it out of order.

Mr. Chairman: Do not be too sure I will rule it out of order. What is it that I am supposed to be ruling out of order before I have seen it?

Interjection: We will tell you.

Mr. Chairman: All right.

The committee adjourned at 4:24 p.m.





429N XC14 - 376

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

TUESDAY, MARCH 31, 1987

Morning Sitting



# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

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O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)
Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

#### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Deputy Senior Legislative Counsel (French)

Evans, C. A., Research Officer, Legislative Research Service

### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, March 31, 1987

The committee met at 10:15 a.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good morning, members of the committee. I recognize a quorum. When we completed our discussions yesterday, as you may recall, we were going to refer back to Ms. Gigantes who had covered the first package of her amendments that were related. I had invited her to share with us her views on the second grouping of amendments.

I will now turn to Ms. Gigantes and ask her to introduce those amendments, not in an official way but by way of discussion. None of the amendments has been moved yet, as members of the committee know. Ms. Gigantes, you now have the floor.

Mr. Gigantes: As I indicated to committee members yesterday, the two sections that I would like to deal with in considering the question of timing are section 9 and subsection 12(4).

To begin with a broad discussion of subsection 12(4), what we are dealing with in the bill is a staged implementation of the phasing in of the sections of this plan that apply to large private sector employers and public sector employers. It means that when we run through the whole staging process, women who work for employers with fewer than 50 employees will have to wait five years after the effective date of this legislation to see an equal pay plan. Women who work in firms with fewer than 10 employees will never see an equal pay plan and will have no complaint process. Women who work in firms with 10 to 50 employees will have to wait five years. They will not have a plan. Women who work in places of employment with 50 to 100 employees—did I say that right?

First, it is nine to 50 who have to wait five years to lay a complaint under this plan. From 50 to 100 employees, you have to wait four years and you do not have a plan. For other employers, there is a requirement to post a plan within the staged process we see here, so public sector employers would be posting plans on the first anniversary of the legislation.

On the second anniversary, we would be dealing with employers who had more than 500 employees. On the third anniversary, 100 to 500 employees would have plans posted. Then for the other two groupings to which the legislation applies, namely, 50 to 100 employees and 10 to 50 employees, they would be dealing with two successive years, four and five, after the passage of the legislation.

We want to get rid of the staging process because we think it is too long a time for women, particularly the large number of women who work for

smaller firms, to wait even for the right to lay a complaint under this legislation.

I suspect that women in Ontario who have looked forward to this legislation—and a great many of them, as we all know, hundreds of thousands of them work for firms with fewer than 100 employees—would expect that as soon as the legislation is passed, it would be possible for them to lay a complaint. That is not what we have in front of us. They will have to wait four and five years, depending on the size of the firm for which they work.

If we leave that issue as one issue, I would like to address another issue that relates to the question of timing. That is the way the bill lays out how equal pay adjustments shall be made. This chart was drawn up during our discussion of Bill 105 but it applies very much to the legislation we are looking at now for the broad public sector and the private sector.

# 1020

What we did was we supposed a work place with 25 employees. Of those employees, 15 were women earning \$14,000 a year and 10 were men earning \$17,000 a year. We made a further assumption, that when the women's positions were compared to the men's positions, in fact they were found comparable. It was established that there was, at that point—we were discussiong Bill 105 as it applied to 1986 and we were hoping it would be passed in 1986, so you have to take these years one year further down the road. We had assumed then a wage gap in 1986 of \$3,000 that would have to be addressed by equal pay adjustments according to Bill 105.

The techniques of Bill 105 for making the adjustments are very much the same techniques we see in Bill 154; namely, the employer shall devote a maximum one per cent of total payroll to addressing the problem of unequal pay annually, so each year the employer, in this case, would be devoting one per cent of the total payroll of all these employees to the adjustments that would be made to the female employees.

During the period when these one per cent adjustments are being made, we can also assume that there will be general annual wage increases. If we make an assumption that there is going to be a wage increase of four per cent each year, what we have, because there is already a gap, is an increasing gap each year. As four per cent is applied to the \$14,000 that women earn each year and four per cent is applied to the \$17,000 that men earn each year, the gap between the two absolutely widens.

That has to be overcome in its tendency to widen the gap by a one per cent of annual payroll contribution by the employer to the wages of women. There are two tendencies going on here under the legislation. One is that the gap widens as annual wage increments go on and the second is that the gap narrows as the one per cent gets addressed to equal pay adjustments.

Our calculations for this work place indicated that if we started addressing the problem in 1987, in this work place it would take over 11 years for the wage gap to be closed. This means that at the end of that period the wages of the men and women who were doing comparable work would be equivalent. But that is a process that in Bill 105 was going to start at year 2, so it would have been 11-plus-two years. In the mechanism we are looking at in Bill 154, the process for hundreds of thousands of women will be even slower, assuming it gets applied to them.

If we are looking at women who work in a firm of, say, 10 to 50 employees, this process will not begin until five years after we pass the legislation, so we would be dealing with a situation where women working in that firm, if this situation applied to them—and I think it is not an untypical situation, frankly—would be looking at five years plus 11 years before the wage gap would be closed.

That is an incredibly long period of time, and as members of the committee will recognize, many women will be changing jobs during such a long period of time, perhaps moving to another employer. There will be women who will be retiring and never getting to the point of having their pay levels raised to the wage levels of the men who are doing comparable work.

It also means that for women who are retiring, if they have private pension schemes, their benefits under those private pension schemes will be less than they should be even though they have suffered years of discrimination, and we have established that by the analysis of their wages. They will still be suffering additionally from a lower level of pensions simply because we have taken so long to provide a remedy for them in terms of the operation of this legislation.

It is for those reasons that we are concerned, first about the staging that is incoporated into Bill 154, and second, about the way Bill 154 proposes to address the question of equal pay adjustments. What we have proposed in terms of our section 9 amendments is that all employers should be posting plans on the first anniversary of this legislation.

What this means is that we would not be going to a staged process. I would like members of the committee to consider that seriously and to consider the implications for women in this province. A staged process certainly makes it easier for the government to oversee the administration of the legislation—I do not think there is any doubt about that—but the penalty we are asking women to bear as we give the government ease of administration is a very high one. It has a very real cost. For many women it means it will be an intolerably long time before they can either see equal pay adjustments begin or, in fact, achieve equal pay under this legislation. For other women, it means they will be retiring before equal pay legislation is effective for them, and it will mean lower pension benefits.

For these reasons, we are making the proposals under section 9. Those are related to subsection 12(4) amendments in which, as we did previously in the discussion of Bill 105, we set a time frame for the achievement of comparable wage levels between men and women who are doing comparable work. The framework we are proposing is that once the pattern of adjustment begins, it should be completed within five years.

This may well require a higher contribution than one per cent of total annual payroll by employers, but when we weigh the cost to employers of making a larger than one per cent of total payroll adjustment each year and the cost to women of having to wait interminably, and for many women, never seeing the effective redress they need under this legislation, we think the balance has to be given to the side of women who are looking for what we know is fairness. That is why we are doing this legislation and we think that if we are going to do it, we should do it in a way that is real for women who need the assistance the legislation can provide.

In very general terms, that explains what we are proposing. If you look carefully at the amendment we are proposing to subsection 12(4), you will see

we have also tried to ensure that there will be a balanced contribution in terms of the number of years and the amounts of payments made by employers, so we will not see employers, who will be called upon perhaps to contribute more than one per cent of total annual payroll per year—there will not be a tendency for employers to leave all that until the fifth year. That has implications for women who will be leaving the labour force before those five years are out, and it has implications for women who might have private pension schemes, although unfortunately, most women do not have private pension schemes, as most men do not. Even fewer women have them.

That is the broad overview of our rationale for the proposals we are making on this subject.

Mr. Chairman: There may be questions with respect to the position you are putting forward on behalf of your party. We now are open for any questions, which I ask members to address through the chair.

Mr. Barlow: These amendments affect section 9 and subsection 12(4). Just walk me through it really slowly. I can see some arithmetic on the board there, but you are saying every plan would be implemented within a two-year time frame.

Ms. Gigantes: No. We would call upon all employers to have posted plans within two years.

Mr. Barlow: All employers. You want to eliminate the under-10-employees exclusion too. You include everybody.

Ms. Gigantes: That is correct.

Mr. Barlow: The person who operates a little machine shop.

# 1030

Ms. Gigantes: If you want to separate that out in your own mind in terms of the government's framework for the bill, which is that employers of fewer than 100 employees should not have to post plans, please feel free to do so. It is possible to consider what we are proposing, in terms of timing, on either basis. In any case, what we are saying is that plans should be posted by year 2 and that the implementation period for the achievement of equal pay under those plans should be by year 5 following that planned posting.

I am sorry, what I have said is year 2. We have set year 1. We would give employers one year to post plans and the first payments would be made at the end of year 2, but they would be retroactive.

Mr. Barlow: It would be a double shock the first year: The employer would pay for two years in one. Is that right?

Ms. Gigantes: Yes. the moneys would have to start accumulating from the time the legislation is in effect, and at the end of the first year the employer would create the plan, post the plan and file the plan with the Pay Equity Commission, which this legislation, by the way, does not require. It does not require the filing of the plan with the commission. We would be expecting the employer also to be setting aside one per cent of total payroll in that first year, which could be applied then to the first instalment of the equal pay adjustments.

Mr. Barlow: They would have to the end of year 5 to have total equity?

Ms. Gigantes: No, it would take seven years.

Mr. Barlow: Seven years; five years after the first two.

Ms. Gigantes: That is right.

Mr. Barlow: Okay, I think I understand it.

Mr. Chairman: Mr. Baetz, you had a question?

Mr. Baetz: I was just going to make a comment and say that your graph certainly indicates that it is rather slow in its implementation. The fact that some people are going to be retiring—I guess some people have retired; they have worked all their lives through a time when there was unequal pay. What we are stuck with here as a committee is how to bring together that which is socially desirable, which is to introduce this as fast as possible, and make that compatible and reconcile it with what really is operationally feasible.

I would like to have your comments. If we imagine that in the first year everybody has to get into the act in posting the plans and making immediate plans for implementation, I wonder what kind of gigantic commission we will have to have in place to deal with this. That is what bothers me. I have no problem at all on the social desirability.

The other thing in all this is that we should keep something else in perspective; that is, do not forget that a year ago we were talking about starting out in the public sector only, and then maybe in the fullness of time we would extend it over into the private sector. Had we followed that course, I think we would be much further behind the schedule we now have in front of us. I wish you would elaborate on the administrative task, as you see it and then maybe we can discuss that aspect a little more. I have no problem whatever on the social desirability of it.

Ms. Gigantes: Let me tell you what I have been able to ferret out in terms of our understanding of what is involved in the administration. There are slightly over 300,000 private firms in Ontario. We know that about 1.7 million women work for them; some will be part-time and some will be full-time. We also know that if we cut off at firms with fewer than 100 people, we are dealing with 16 per cent of the firms in Ontario, if I remember my figures correctly. In other words, 84 per cent of the private firms in Ontario employ fewer than 100 people, so 84 per cent of the private firms in Ontario, under this legislation, would not be called upon to post an equal pay plan.

You can make a choice about that simply on philosophic grounds, on business grounds, on the grounds of equity for women or you can make it on practical administrative grounds. If we look at it on practical administrative grounds and say that we are going to require the other 84 per cent of firms to be posting equal pay plans, then we are going to have to provide some method of administering the adequacy and operation of those plans. There is no doubt about that. But this is a choice which is open to us, and it is one I think ought to be considered.

When we say that 84 per cent of the firms of Ontario would not have to

post plans under this legislation, it does not mean that 84 per cent of the women who work in the private sector would not have plans, because of the distribution of women in terms of employment in Ontario firms, which is very much, by the way, like the distribution of men in employment. Most people in Ontario either work for very small firms or very large firms. If we say that 84 per cent of the firms will not have to post equal pay plans, by my reckoning it means that about 570,000 women will not have equal pay plans. That is about a guarter of the total of two million women who work.

If we said there shall be no plans posted for firms with fewer than 100 people, about one quarter of the women who work, if they were covered by this legislation—and some of them may not be because they are part—time or because of red—circling, merit pay schemes or all the other difficulties that exist in the bill—would not be eligible in any way for an equal pay plan. They would be eligible to make a complaint under the complaint system, but they would have to wait four and five years to be able to do that; five and six years actually, because it is a year after the anniversary.

We will be talking about one quarter of the female work force in Ontario that would have to wait five and six years to make a complaint. That is an awful long time, and it is a very weak mechanism, as we know. We have seen its weakness at the Quebec legislative level and we have seen it at the federal level. It has been effective for very few groups of working women.

That is why I feel very strongly there ought to be a plan. There are alternatives again on this question because the legislation as it is before us does not require employers of these women--most of them will be unorganized, not have the benefit of unions--to provide detailed information to their employees about wage scales and positions in the firm or the organization. I do not know on what basis those quarter of a million women are going to be able to make an effective complaint.

Brian Charlton, were he here--I should apologize. He is on the road, Mr. Chairman, caught in the snow between Hamilton and Toronto.

The reason I prefer to see a plan is the same kind of reason that we put a motion on a table at a meeting. We know that if we all sit down at a meeting where we are going to discuss subject A, the best way to get some decisions around that subject is for people to put forward motions and follow rules of order in the discussion of it, and we deal with the motion under certain rules of order. Without a motion on the table, a meeting rarely comes to a spontaneous consensus. We know that.

I look upon the equal pay plan, whether it is good, whether it is bad, whether it has to be questioned by employees or whether it is approved by employees, as a motion on the table for the female employees, and in fact the male employees, in the firm to look at and ask: "Does that address our real situation? Is that going to handle our problem here? Is it the best way to go about it?"

That motion being on the table allows people to crystallize their questions and their concerns about what the employer proposes to do. I very simply consider it that kind of tool, as it were. I do not think that for most employers it would be an enormous, hard job to look at the pay levels of women working in a firm of fewer than 100 employees and determine if their work might be comparable on the basis of skill, effort, responsibility and working

conditions, or lay out some kind of proposed plan to deal with whatever problems the employer saw. Then the employees can question that.

In the nonunionized shop, it is more difficult to question, but it still can be questioned. It is there to be questioned. People do not have to come up with their own understanding of wage rates within the firm. They do not have to come up with their own understanding of the skill, effort, responsibility, working conditions of different positions. They can have an employer's statement through the mechanism of a plan which they can then address. From my point of view, that is the benefit of having plans.

# 1040

There is nothing about our proposal, in terms of the timing, which would determine your attitude on the question of whether we should have plans for firms that employ fewer than 100 people. You can go either way on that one. I will put the proposal for doing it. If we, as a committee, decide that is not our consensus or it is not our majority will, then we will not do it. But the question of timing can be separated from the question of whether there are plans for everyone. I would like you to look at it in that sense if you would.

Mr. Chairman: I suggest that probably the way to proceed would be to separate it, because there may well not be a feeling of support for one or the other, depending on the way the various members of the committee interpret those amendments. It might be in your best interests to separate them since they may be viewed differently.

Ms. Gigantes: I will certainly look for the assistance of other committee members, too, in making these small divisions of principle.

Mr. Barlow: We will look forward to helping you.

Ms. Gigantes: There is another point we have to discuss.

Mr. Chairman: You will find this is a very helpful committee. Before you go on, Mr. Stevenson had a point. Did you want to continue, Mr. Baetz?

Mr. Baetz: I just want to ask one final question in regard to the statistics you are using here, the 1.7 million. Is that private sector or public sector?

Ms. Gigantes: That is all private sector. Two million women work in Ontario and 300,000 to 350,000 are in the public sector.

Mr. Stevenson: The concern of getting all these plans in place in one year, as I understand it, is that 300,000 plans must be developed and discussed, and some sort of agreement must be reached on them and, at your suggestion, filed with the commission, all in one year. This seems to me to be unrealistic and unworkable.

Mr. Barlow: There are 365 days in a year.

Mr. Stevenson: I recall the comments of, I believe, Mr. Rives from Peat Marwick. He is a person who is working in the business of developing plans. I suspect he is spending a fair bit of his time with some of the bigger companies, but I can recall him saying he felt it was unrealistic to have

plans developed in a year, and that was just for the few companies, under the current legislation, that would have to file a plan.

Although it may be a valiant goal to go after, I wonder how these things are going to be put together that quickly. In fact, if they were asked to put the plans together that quickly, how many of them would be done well? Certainly, if it is a job that is worth doing, it should be done as well as possible.

The way we are proceeding with the bill, we are almost asking everyone to run, before some companies and some groups have had much experience at all in trying to sort out these problems. Regardless of how socially desirable it may well be to accomplish this end, I am afraid we are going to end up in a real mess, particularly in the private sector.

Ms. Gigantes: Could I just take a moment? In terms of the practical implications again, because that is what we are talking about on the question of the plans, which is different from the question of timing, of these 300,000 firms, 16 per cent are now called upon to produce plans, and those are the larger firms. Without making any criticism of anyone, I would suggest to you every time you ask a consultant how long a job is going to take, he will tell you it is going to take a long time and there is a lot of work involved in it.

In the meantime too, Mr. Rives has established some of the background of knowledge on the subject of equal pay planning in Ontario and certain techniques for dealing with the problems of creating equal pay plans in Ontario have been devised. Some of them will be applicable beyond one firm in terms of approach and so on. As we go on, with more and more practice, as I tell my son, we get better and better at everything.

In any case, if we said we were going to have plans for only 16 per cent after two years, which is what this legislation is telling us, we would be dealing with the large firms, where it would take longer. I would propose it could be done in one year. Some of the other indications we had, for example, from the Toronto school board situation, are that it can be done in one year. These are, in any case, the firms that will take the longest. The firms I would propose to add to the process are the firms that are smaller, the 84 per cent of firms that have fewer than 100 employees.

Again, I am going to point out to you that in terms of what you call discussion around these plans, only five per cent of all these women are organized, so there are not going to be many discussions. These are going to be employer-initiated plans. It is not going to be groups sitting down and discussing this stuff in most cases, in 95 per cent of the women's cases, in terms of the private sector. There will not be a union involved. There will not be discussion.

The employer will look at wage rates, positions, skill, effort, responsibility and working conditions for positions and will lay out the plan. That is inevitable. There is nobody to discuss it with. We cannot call upon unorganized women to sit down with an employer in a situation where there is no balance of power of decision-making about the situation at all and ask for discussion. These will be employer-initiated plans.

I suggest to you that for the firms under 100, it would be a much simpler job than for the firms over 100. Again, I remind you that in my mind,

and I think you will follow this too, the question of the timing need not be related to the question of whether we have plans for all firms.

Mr. Chairman: Ms. Gigantes, could I ask a question with respect to the figure of 300,000? You are using the term "firms," and we are interplaying that word almost as though it were one and the same with "plans." Firms and plans are not the same.

Ms. Gigantes: No, they are not the same.

Mr. Chairman: Is it not possible that of those 300,000 firms, a goodly number of them will have a multiplicity of plans?

Ms. Gigantes: The government might be able to tell us this. I have been able to find no analysis which indicates what the implementation of this legislation would mean in terms of the number of plans we could expect.

Mr. Chairman: I do not think one exists.

Ms. Gigantes: I do not think one exists nor do I do think one can exist. based on the information we have available.

Mr. Chairman: Of course, it would depend on how this bill ultimately is put together as to how many companies would be required to file plans and so forth.

Ms. Gigantes: Exactly.

Mr. Chairman: I only wanted to make the point for the committee's information that the figure of 300,000, at best, is not an accurate figure, because what we are talking about is plans rather than firms.

Ms. Gigantes: Yes.

Mr. Chairman: General Motors ostensibly could have many divisions within its working units, and that could be--

Ms. Gigantes: How we define employer, how we define a geographic division, whether we have such a notion, how we define related employer, if we get into that concept, and obviously whether we call upon employers in Ontario, no matter what the size of the firm, to create plans—however we define employer—is going to affect the number of plans.

I have suggested the number 300,000 because that is all we know. We do know there are over 300,000 firms in Ontario. From the analysis that has been done for the government by consultants, what it has done is make an assumption that there are over 300,000 firms. That is all we know.

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Mr. Chairman: You can see the line of questioning some of the members have taken with respect to what the fallout of that might be, over whatever time frame, in terms of an enlarged bureaucracy. Does that cause you any concern with respect to what kinds of numbers would be required to police those plans? Ostensibly, the plan would be filed with a commission, the Ministry of Labour or someone.

Ms. Gigantes: Under our amendments, they would be required to do so.

There is nothing in the legislation that requires the filing of a plan.

Mr. Chairman: Following your line of thought--

Ms. Gigantes: That is correct.

Mr. Chairman: --when that is filed, something has to be done with that plan. It has to be reviewed by someone.

Ms. Gigantes: No.

Mr. Chairman: Something has to be done with that plan, or what is the purpose of filing it?

Ms. Gigantes: The plan becomes an official document. It is on file. Our amendment says it is then the basis of complaints because it is inadequate, because it is not being implemented or because it no longer covers the circumstances in the work place. Nothing has to be done with the plan until somebody says there is something wrong, until there is a complaint.

The employer may complain; the employees may complain. In fact, if we are going to have plans for firms of under 100 employees, recognizing the increased work load that would mean to the Pay Equity Commission in dealing with complaints, we have suggested we should have a system whereby the review officer who investigates complaints, acting on behalf of the commission, would make the determination, unless the commission, on certain grounds, decided to hear the complainant and the other parties involved in the complaint.

Mr. Chairman: In your view, would that decision be appealable?

Ms. Gigantes: No. The decision of the commission?

Mr. Chairman: Not the decision of the commission; the decision of the review officer.

Ms. Gigantes: Under certain conditions. That is another section of our bill. These ideas are linked. In fact, if this committee decides it does not want to get into creating legislation which requires plans for firms of under 100 employees, then the implications for the amendments we have put forward fall out in terms of the way the review officer would have mandate and responsibility and also the way complaints would come to the commission.

On these two amendments, I would ask committee members to separate the question of timing from the question of plans for all firms. Those are two separate ideas, and we can easily adjust to meet committee members' feelings on these topics. What I wanted to lay out were the implications, as far as we can imagine them, for the amount of work involved. Again, I point out there will be less work involved in creating the equal pay plans for small firms.

Mr. Chairman: Before I get to Mr. Baetz, perhaps I could raise a question with the staff in connection with the proactive aspects of Bill 154, as opposed to what goes on in Quebec and the federal government. Could you run us through or give us some indication of what happens to plans that are posted in either of those other two jurisdictions? Can you give us some idea of the flow of bureaucracy, the administrative process and that kind of thing?

This is a difficult thing to get a grasp on, how much you are really

committing the government to spend at some future point for new staff to police the situation. Perhaps I could ask for some help on that.

Ms. Marlatt: In Quebec and in the federal government, it is a complaint-based system, so there is no requirement to post a plan. A woman in any of those organizations in Quebec or the federal government who is covered by the legislation and who feels she is not getting pay equity can complain to an agency or a bureaucracy, which will then initiate an investigation on her behalf and carry it out. It does not require a proactive approach. Players may voluntarily be doing proactive pay equity, but it is difficult to know that, because there is no requirement to post or to file a plan in those jurisdictions.

Mr. Chairman: With respect to contract compliance, could you give us any indication of how the federal government handles that?

Ms. Marlatt: They have contract compliance for employment equity, and a contractor who wants to do business with the federal government must undertake certain employment equity initiatives and at some point in time that will include filing an employment equity plan.

Mr. Chairman: That is the point I wanted to get at. It does not include that at the moment.

Ms. Marlatt: I think that is one of the later --

Mr. Chairman: I ask that as a question, not as a statement, because I am not sure.

Ms. Marlatt: You have to certify that you are going to do it, but at this point in time you do not actually have to do it. It is important to make a distinction between employment equity and pay equity, because they have to show they are doing something about employment equity in the hiring of the various target groups and recruitment and promotion and so forth. That does not have to include pay equity measures.

Mr. Baetz: Again back to the operational feasibility here, and certainly I do not think anybody here wants to introduce a piece of legislation that allows for undue and unnecessary foot dragging. What we do have to allow for is people to get a chance to get this thing into place in an orderly way. I worry about those companies with fewer than 100 employees because we heard the theme--it was repeated like a Grecian chorus virtually--when they came in here. It was the small companies that said: "God, we do not even have a personnel officer, how do we go about this? How do we measure the value?" You recall that very well, this throwing up of the hands, and yet those were the companies that would have to in this first year develop a plan, right?

Ms. Gigantes: You can take that or leave that, Mr. Baetz. That is for you to dispose of. I am proposing that they have to write a plan.

Mr. Baetz: That they have to write a plan?

Ms. Gigantes: Yes, I am.

Mr. Baetz: I guess that is what worries me; those companies, because they do not have the personnel resources on board, will be going to consultants. I would love to be a consultant, because I tell you, the forces

of supply and demand will be really operative. Their fees are going to go sky-high during the first couple of years, because there are so few around and so many who want them to do their plan as fast as possible. I am still in my mind seeing an enormous logjam here, quite apart from, as I say here--

Ms. Gigantes: Mr. Baetz, have you seen The Canadian Manufacturers' Association checklist on how to implement employment equity? Again, this is a hiring, promotion, training program for minority groups and for women. Have you seen their checklist, their package?

Mr. Baetz: No.

. Ms. Gigantes: It is a very nice "how-to" kind of pamphlet that tells each employer in Ontario who is interested how to go about setting up an employment equity program, what factors to look for in his place of employment, and so on. It is quite possible for that kind of package to be created for employers on the question of equal pay. Where there is a will, there is a way.

Mr. Barlow: I have seen that. I just looked at it very briefly, that package that you are talking about. As I recall, you are looking at larger firms with real expertise.

Ms. Gigantes: Yes, it was done for larger firms.

Mr. Barlow: You take a look at any firm, any manufacturer or business of any sort that has fewer than 25 or 35 employees--these do not have that sort of expertise, because now everybody is doing every job.

Ms. Gigantes: It was done for larger firms. The Canadian Manufacturers' Association booklet was done for larger firms.

Mr. Barlow: That is right.

Ms. Gigantes: It is possible to set up the same kind of thing for smaller firms.

Mr. Barlow: It is possible, but it is not practical for the small firm to sit down there--the firm employs 25 people--

Ms. Gigantes: You have to decide what is practical, and you also have to decide what is fair.

Mr. Barlow: We have to convince you what is practical. There is a certain amount of practicality in this.

Ms. Gigantes: You make your own choices about that.

Mr. Barlow: You take a firm--let us just take 25 people. The boss goes and gets the coffee for the staff half the time, as much as the time as it ever works the other way. They all have a cross flow of information. There is just no practicality in it. This is the wrong time to be debating it--we are supposed to be getting an understanding of what the amendments are, I realize that.

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Ms. Gigantes: I hope you understand that you may choose and this

committee may choose to separate the question of full plans for all firms from the question of timing. I would like you to address the question of timing under the discussion in this section.

I believe that whether it is a firm of 100 people or 500 people, it is possible for an equal pay plan to be posted within a year. I believe the process should begin immediately, that on the passage of this legislation employers should start setting up an equal pay fund which they may not have to use, but they should set that money aside. I further believe, as your colleagues believed when it was a question of Bill 105, that the process of making the adjustments should be completed in a five-year framework. I remind you that motion on Bill 105 was moved by Phil Gillies on behalf of your party. He did it because when we looked at those kinds of figures—I do not know whether you will recall the presentation by the people from the Young Women's Christian Association of Metropolitan Toronto who came before us, but they had worked out a scenario in which equal pay adjustments in one situation they examined would take 22 years. The one we just looked at here would take 17 years.

Mr. Barlow: Is that a real case or just an assumption?

Ms. Gigantes: No, it is not. It is not a real case but I think it is not an unreal case.

Mr. Barlow: I wondered whether you had somebody's name in the background there.

Ms. Gigantes: We have had a good number of people take a look at it and we have never had any complaints about the fact that this looked like a reasonable scenario.

Mr. Baetz: Part of the reason for the slowness in the plan's developing, eventually reaching equity away down the road, is based on the assumption that the annual increases in salaries and wages are based strictly on a percentage. Obviously, if you earn \$50,000 a year and you get a four per cent increase, in terms of dollars it means—

Ms. Gigantes: Or \$17,000 compared to \$14,000.

Mr. Baetz: Or \$17,000, but even that assumption is one that is on rather shaky ground now, because is it not true that more and more companies in fact have the internal adjustment so you do not apply the same percentage increase to the top-income employees as you do to the bottom? The bottom always gets a higher percentage increase than the top because if they do not, the gap would grow annually.

Ms. Gigantes: If you have any statistics that would indicate that, I would be interested. If it were true, why does the wage gap persist?

Mr. Baetz: In anything I have managed we have done that, so maybe the others are away behind.

Ms. Gigantes: I will not say that you had authority and responsibility for too little.

Mr. Chairman: According to the commitment I gave you earlier, we should be about ready for a brief break. I know some of you have to make phone calls and a few other things before we come back, so can we take a 10-minute

break until 11:15? Is that adequate for what everyone has to do?

The committee recessed at 11:03 a.m.

# 11:25 a.m.

Mr. Chairman: We are back on the discussion of the amendments being proposed by Ms. Gigantes. Are there any further questions on either the plans or the timing, which are the two sections to which Ms. Gigantes is addressing these amendments?

Ms. Gigantes: In addressing the amendments, I tried specifically to raise the question of timing. We did have a lot of discussion on the question of plans, but that is not why I raised these two amendments in this section of discussion. I raised these two amendments in this section of discussion to raise the issues around the timing, the phase-in suggested in the bill and the open-ended process of equal pay adjustments suggested by the bill, and the responses that we would propose to those suggestions in the bill.

Mr. Chairman: Having said that, are there any questions?

Ms. Gigantes: All in good time.

Mr. Chairman: We dealt with this earlier. I would believe at this point in time it would probably be of benefit to go to the parliamentary assistant and have him discuss some of the government amendments. Mr. Ward, if you are ready for that now, we will turn over to you.

Mr. Ward: Just very briefly, in tabling with the committee a series of amendments that would include the Ontario public service under the scope of Bill 154, it is my understanding that under the standing orders the minister has formally to move those amendments with the consent of the committee.

But the difficulty arose in terms of dealing with Bill 154. There was some suggestion that we may come back to the OPS. I think, on reflection, that would be very difficult. It is not that every one of the amendments is of a great substantive nature, beyond the mere fact of rolling it into the bill, but they are so repetitive that every time we come to a clause or whatever, we would virtually have to stand down everything that we are dealing with.

I seek your advice, Mr. Chairman, in terms of how we should deal with this on a formal basis as we proceed through the bill. The suggestion I have is that we consider these as part of the bill until such time as we can have the minister come in and formally move them. Otherwise, we are going to have to be in and out of every section as it goes by.

Mr. Chairman: I think that is a reasonable request, unless the committee has strong reservations to the contrary, but certainly from the chair's standpoint, I do not have a problem with that.

Ms. Gigantes: I would like to welcome the parliamentary assistant's amendment. It has always been our party's position that there was no reason why we could not have had one bill to start with, and that was perhaps a year and a half ago. We are very pleased to be able to deal with all working women under one piece of legislation. However, during the course of consideration of Bill 105, as you will recollect, we did table and approve certain amendments which, in our view, constituted very important content amendments to the legislation affecting the public service.

Until such time as we can feel assured that the same kinds of amendments will be made and approved by this committee in the context of Bill 154, we will not be ready to give consent to deal with the question of folding in the public service. Let me give one clear example. The Conservative Party, in discussion of Bill 105, moved an amendment, which we passed in committee, which set a time frame for the achievement of equal pay for work of equal value for the public service of Ontario; and that time frame was a five-year implementation process.

As we have just discussed, we would like to see the same kind of amendment. The time period may vary by two days or two years or whatever this committee approves, but we feel we must have the same kind of assurance that the process of implementation will not be dragged out over 11 years, 13 years, 17 years or 22 years, that the standard we looked at in terms of implementation of Bill 105 for the public service has to exist for the public service and for all other women who will fall under the aegis of this legislation, within Bill 154.

I think the parliamentary assistant understands our concern on this, and what we have proposed, in his interest in dealing with the public service under this bill, which we would like to do, is that we deal with those elements, namely, coverage, timing, the key content elements of Bill 154, to the stage where we have at least achieved the same standards in Bill 154 as we previously achieved for the public service by amendment in Bill 105.

At that stage, we are quite prepared to go through the introduction of the amendment that he is referring to and deal with adjustments to the legislation or to amendments. I presume it would not take many adjustments to amendments already made because the items we are talking about in terms of content are not many in number. We would be very happy to do that, and we will give full co-operation in doing that.

# 1130

Mr. Ward: I want to make it clear that the amendments being proposed are to change the definition of the broader public sector to include all public sector employees in this province. I do not want to go back at length into the reasons for having separate pieces of legislation at the time we had separate pieces of legislation, but I do think those reasons were valid. I will not go beyond that. It has been understood from the outset that this committee has to determine a number of issues relevant to Bill 154 in terms of timing, coverage, etc., but I want to make clear our position that it is appropriate that all the workers in this province be covered by the same legislation.

That legislation will undoubtedly be on the basis of what the ultimate disposition and outcome is of this committee's consideration of Bill 154. I do not think it will be predetermined by whatever status another piece of legislation may have in whatever form it is, because there is some question as to what the status of that legislation is. I want to make that clear.

Obviously, if your party is not satisfied with the ultimate outcome of this committee's deliberations on Bill 154, it may choose to withhold unanimous consent and block the coverage of the workers in the Ontario public service from this bill. That is a choice and decision you will have to make at that time.

that it will be possible for us to deal with content items in Bill 154 in such an orderly fashion that the parliamentary assistant will find it very simple to make his amendment that includes coverage for the public service of Ontario within the ambit of this legislation. We will be as co-operative as we can in order to achieve that, because it has always been our purpose to have one piece of legislation.

Mr. Chairman: What more could one ask for?

Mr. Ward: We will look forward to seeing how that falls.

Mr. Baetz: I would like to say that we, too, welcome the proposal. If it had not come or even if it has come, we are prepared to move an amendment also to include Bill 105 in Bill 154, including the broader definition of public servants, crown agencies and so on. I do not want to elaborate on any possible caveats we might have in supporting it, except simply to say we do welcome it and we will support it, because we also believe there should be one piece of legislation.

Mr. Chairman: That certainly simplifies your job. There has been a tremendous outpouring of support from all quarters.

Mr. Barlow: Let us break now.

Ms. Gigantes: To everyone's delight.

Mr. Chairman: There may have been some subtle nuances within the responses of the various parties but, generally speaking, it looks like the philosophical agreement at least is there, and we will have to work out the details.

Where does the committee wish to go from here? Is there anything further you wish to say, Mr. Ward, in connection with your amendments?

Mr. Ward: No, I do not think so. I believe we have copies available and we will distribute them over the noon hour. I just want to make it clear that the approach was a change in definition as it relates to the broader public service. The balance of the amendments reflect that change and identify the areas where references are made throughout the bill.

I hope, too, that it is understood that at some point the minister will have to formally move these amendments, but I hope that does not constrain or restrict our ability to deal with those clauses in the bill and go through a process, perhaps after the fact, of formalizing those deliberations.

Mr. Barlow: Why would the minister have to move this?

Mr. Ward: Apparently under standing order 15--maybe the clerk or the chairman, with his great wealth of procedural expertise, could respond to that.

Ms. Gigantes: He owns Bill 105, and if he is going to do away with Bill 105 and give it over--

Mr. Barlow: I have no problem with it, but I just wondered why that was procedurally necessary.

Ms. Gigantes: We have to have his public agreement.

Mr. Chairman: Essentially, it gets back to the key argument this chairman has held to for some time, namely, that the government is the only party that can bring in an enlarged bill or enlarge the scope of the bill to any substantive level, other than getting unanimous consent of the committee.

In this instance, the government's representative through cabinet would be the Attorney General (Mr. Scott), so he is the one who would have to introduce that. That would be then an appropriate amendment or change, and we could deal with it at that time and decide whether to support it or reject it. It is in order to do it that way; it is simply a parliamentary procedural question.

Mr. Barlow: Thank you very much.

Mr. Chairman: There is no extra charge for that at all. That comes with being on this committee. There are these little gems that flow out every once in a while.

I am open to the committee's suggestion on how you want to proceed from this point.

Ms. Gigantes: I wonder if the committee would consider, at this stage, getting prepared to vote on the amendments that we have discussed by broad subject area, namely, coverage and timing. If we were prepared to do that, it would ease the flow of our work, particularly in terms of the parliamentary assistant's interest in bringing forward the public service coverage under Bill 154. We could begin to feel more firm about what it was we were going to achieve through Bill 154, and the process would be smoothed out that way.

Mr. Barlow: There is no problem with proceeding with it, but I think our party would like to wait until after lunch to bring any of those to a vote. It could be immediately after lunch. This is not a delaying tactic; we just want to have a further discussion on it as a caucus. Rather than call a recess now, we could hold off. There is no problem with beginning or introducing the motions, but an understanding that before making our final decision we would like to have our lunch break.

### Mr. Baetz: Have the motions been tabled?

Mr. Chairman: No. The motions have been circulated, and that is a bit of a distinction from being tabled. No amendments or motions have been tabled yet. They have been circulated, as a consideration to the members of the committee and to assist them with their decisions, but they have not been tabled.

Mr. Ward: On the two positions that were just put forward, I think we would support the notion of dealing with some of the substantive issues after the lunch hour, in deference to Mr. Barlow's comments. I propose that we do deal with the issues of coverage first off. They are fundamental issues and they have a great impact on a lot of the amendments that have been tabled. I think they are issues that we should resolve now, at the outset, so that we can focus the balance of our deliberations on other specific aspects of the bill.

Given the request of the official opposition, I wonder, unless there are any other items, whether rather than start those discussions and stand down the votes, we should not leave that for the afternoon session and recess early.

Ms. Gigantes: Fine with me.

Mr. Barlow: Fine.

Mr. Chairman: All right. We have all-party agreement that we recess early in consideration of the votes to take place this afternoon and the need for some discussion among the parties with respect to the position they will be taking on the first issue of coverage, it being understood that that will be what we discuss when we come back at two o'clock. That being the case, we will recess until then.

The committee recessed at 11:40 a.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
TUESDAY, MARCH 31, 1987
Afternoon Sitting



# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Barlow, W. W. (Cambridge PC) for Mr. Rowe

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

### Staff:

Schuh, C., Deputy Senior Legislative Counsel (French)

Revell, D. L., Legislative Counsel

### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

## LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, March 31, 1987

The committee resumed at 2:14 p.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good afternoon, members of the committee. I recognize a quorum. I believe we are ready to get under way with this afternoon's discussions. We have completed most of the major groupings of amendments to this point in time. I believe there was agreement when we recessed this morning that we would begin with section 2, that we would start our discussions with respect to clause-by-clause on section 2. The amendments have not officially been put yet, as all members of the committee know. We will ask for those to be put in order as we go through the various clauses.

Ms. Gigantes: It was my understanding this morning that we would begin votes on possible amendments affecting coverage under this legislation, so that, having decided that one element of the legislation, we could then move to other elements that may be affected by the question of coverage.

Mr. Chairman: Is that section 2?

Ms. Gigantes: No, we would begin with section 17. You will remember the groupings of amendments under which we have had general discussion of coverage. The first in that grouping was section 17.

Mr. Chairman: Let us see what the committee wishes to do. The parliamentary assistant may wish to make a comment on that. Ms. Gigantes is suggesting that we begin with section 17. I appreciate that is the way you had outlined your amendments. However, Mr. Ward, do you want to make a comment?

Mr. Ward: I believe doing section 2 would deal with the same element as section 17 because in subsection 2(2) there is a reference to the fewer than 10. I just point that out. The other thing I would like to point out is that I do not believe it starts there. In terms of the debate and argument that revolved around coverage, it is essential that we deal with at least two definitions. I know that dealing with the definitions is usually a matter that is left until the end, but it is such a fundamental issue that I believe we should deal with the definition of "male job class" and "female job class" wherein the 60 and 70 per cent threshold limits are established.

Mr. Chairman: I am open to the committee with respect to how you want to proceed. I think we can move either with the definitions in connection with male or female job classes, as suggested by the parliamentary assistant, or section 2. I have no real opposition to starting with section 17, although I would like it in some order we can all follow.

Ms. Gigantes: Two comments: One is that while the parliamentary assistant is correct and the first mention of the exemption for employers with

fewer than 10 employees falls in the bill under section 2(2), the clearest statement of that exemption is given in section 17, which is why I suggested focusing on that.

On the matter of the definition of male and female job class, it is my understanding from the amendments that were tabled by the government some time in the middle of our discussion this morning that there are proposals on a fairly broad basis from the government to change the treatment of job class in subsections 5(6) to 5(10). You will find that five pages in on the government motions that were tabled this morning.

I think it would be wise for us to have some time, particularly given the government intent on having Bill 105 on the public service incorporated, as it were, into Bill 154--

Mr. Ward: Excuse me; just a point. When we were talking about the definitions that relate specifically to the coverage, you identified some amendments under "job class" and I was not proposing that we deal with those specifically now. What I said was "male job class," which is a separate definition from "job class" and "female job class." I was not intending that we deal with that other issue. I want to make that clear because it does get a little off the specifics of what I thought we determined before lunch we would deal with.

Ms. Gigantes: If the parliamentary assistant refers to section 5, he will find that the test for comparability of male or female job classes is outlined in section 5. It was under that section that I proposed to deal with the question. I still prefer to do that, but if he would prefer to do it in a definitional sense, I will hear argument about that. What we are looking at is the mechanism in the bill, not so much the definition. It seems to me to make more sense to look at the mechanism.

## 1420

Mr. Stevenson: We are prepared to go ahead and deal with this. I do not know whether we have any particular concerns about the order in which we take it. However, on the item of the threshold of 10, we would like to stand down that one section until Monday, if that can be arranged. We are prepared to deal with all the rest of the items on coverage today.

Ms. Gigantes: That is fine with me.

Mr. Chairman: Having said that, there may be some value in proceeding to section 17 rather than section 2 because the major operative part of section 2 is the number 10. As Ms. Gigantes quite properly pointed out, the detailed definitions are more specific under section 17. We really have two things on the table now for you to discuss. Do you want to go with the definitions, as suggested by the parliamentary assistant, or do you want to proceed with section 17?

Ms. Gigantes: Essentially, what we are getting from the Conservatives is a motion that we postpone until Monday the discussion on the question of an exemption for employers with fewer than 10 employees. In the hope that means the Conservatives will support our motion on this subject, I am quite prepared to do that and to move on to the other items we identified under the sections dealing with coverage, namely, sections 7 and 5 and subsection 12(5).

Mr. Ward: If the intent of the Conservative Party is to stand down consideration of the 10-and-under matter, we do not have any problems with that.

Mr. Stevenson: I have not made a motion. I am just making the suggestion and asking for the agreement of the committee that we hold that off.

Mr. Chairman: Do we have consensus, as well, on beginning at section 7?

Ms. Caplan: No, section 17 is what was requested.

Mr. Chairman: No.

Interjections.

Ms. Caplan: Okay. Are we going to start with the definitions?

Mr. Ward: By going to section 7, we are dealing with the issue of the allowable exemptions instead of some of the specific aspects of coverage. I want to reiterate that the whole issue of a male job class and a female job class is fundamental to most of the amendments that are put and I think we should get on with it.

Mr. Chairman: Are there any other views on that?

Mr. Ward: You want to deal with those definitions then.

Mr. Barlow: I certainly have no problem with dealing definitions first.

On section 1:

Mr. Chairman: All right. Let us get on with it. We are debating where we are going to start, so let us start. I will ask that the committee refer to section 1, the definitions dealing with male and female job classes. We have agreement that we will not deal with any other definitions. They will all be stood down and we will come back and complete definitions when we finish the bill. If that is agreed, we will deal with only the two. I ask the parliamentary assistant to lead us into this with respect to his views on that section.

Mr. Ward: We had a discussion at length yesterday on everybody's views on this issue. I just want to reiterate that in terms of the workability of this legislation, I believe and the government believes it is essential that those threshold levels be established to identify for employers, who have to work within the proactive mode, where those comparisons have to be made.

I do not really want to speak at length on this issue, because we had that discussion yesterday. In looking at some of the amendments that were proposed and some of the discussion we had yesterday, particularly in relation to the amendments that were put forward by the New Democratic Party that would see the elimination of these thresholds, I also want to point out that I fail to see in those proposals at what point pay equity is achieved under its model. It appears to me a reversal back to a process that is primarily complaint-based. I guess I am off topic because I am talking about its

amendments. I think all that can be said has been said in terms of the threshold levels for those comparisons.

Mr. Chairman: This is a very fundamental part of the bill, so I am going to allow for a little discussion and get to the vote in a moment.

Ms. Gigantes: Because we are dealing with the definition rather than with the operative section of the bill, which had been my suggestion originally, I propose that committee members consider opposing the definitions as they stand in the bill. I will then move an amendment that I do not have formally prepared because I expected to deal with this other section in the bill, section 5, rather than dealing with it within the definitional section. As you pointed out earlier, it is normal procedure for us to go through sections of the bill in an operative sense and then return to the definitions at the front of the bill to make whatever changes seem appropriate.

Since we have decided to go ahead in this manner—I have no particular objection—I would like to give notice to members of the committee that I propose to amend "male job class" and "female job class" definitions in the same way; namely, to delete clause (a) in each amendment and to add the following words to clause (b), "taking into account factors such as the current and historical ratio of men and women in the job, and prevailing and historical sex stereotyping of the job."

In other words, the purpose of our amendment would be to remove the 60-70 per cent test and to set out in the definitional section dealing with female job class and male job class, the notice that is given in section 5 by the government; that, in fact, where there is a question about the applicability of the 60-70 per cent ratio test, the reference will be to the historical incumbency of those positions and to the sex stereotyping of the work. I think that gives an indication to committee members of our purpose which is, essentially, to get rid of the 60-70 per cent test.

Mr. Barlow: I have a question of the parliamentary assistant on this 60-70 per cent factor. He said that there were a number of suggestions made throughout the deliberations. What effect would it have on the act itself and the cost involved if those numbers were equalized at, say, 60-60 per cent, 70-70 per cent, or 50-50 per cent for that matter? It is going to help me in an answer to--

Mr. Ward: In terms of looking at other numbers, I may defer to the staff on that to see what impact is there. I guess what the argument focused on was the need to establish the threshold levels in order to make the comparisons. I take it that your question is why is it 60-70 per cent.

Mr. Barlow: Why that? Was that grabbed out of the air?

Ms. Marlatt: The 10 per cent difference is taking into consideration that women are a smaller percentage of the labour force. Women are about 45 per cent of the labour force and men are 55 per cent. So that was the rationale for having the different thresholds for male and for female. Some other jurisdictions have taken just 70 per cent. There is a fair bit of flexibility in choosing.

Those particular percentages were adopted for Bill 105 when it was introduced because they had some relevance to the Ontario public service in terms of picking up some traditionally female-predominated job classes that were wanted to be picked up in that situation. We cannot be sure that will be

the case throughout the private sector and the broader public sector, but when you take those as your starting point, plus the flexibility in subsection 1(4) to have historical incumbency and sex stereotyping, we think they are a good starting point, as they were for Bill 105, given the added flexibility when you go beyond the Ontario public service.

1430

Mr. Barlow: Okay, that is fine.

Mr. Baetz: I was going to ask essentially the same question. I guess it has to be in the form of a supplementary. Certainly, as has been noted several times around this table, this is a very fundamental question relating to this bill. It is something I think we as a committee should not hesitate to spend a bit of time on to fix in our minds, perhaps for the last time, precisely why it is 60-70 per cent and not 50-50 or something even more closely related to the participation rate by women in the labour force or, to go back to Ms. Gigantes's proposal, why it is not being eliminated entirely.

I am more interested in hearing the views of the parliamentary assistant and the staff. Those of us along this side of the table would like to be convinced about the validity of this. As the parliamentary assistant has stated, it is probably the central issue as to how we go about this piece of legislation.

Mr. Ward: I guess it goes back to the basic premise of the legislation as it is put forward and enunciated even in the preamble. The purpose of the bill is to redress systemic gender discrimination. The bill proposes to achieve that, first of all, through a process of identifying where it exists and then through a process of redressing it through the mechanisms that are in place.

In order to do that, employers are required to have some sort of mechanism to make a determination of what is, in fact, a female job class and what is, in fact, a male job class. I think Ms. Marlatt has adequately enunciated the rationale behind the 60-70 per cent.

If you want me to go beyond that and try to address the other side of the argument, that it should be eliminated altogether by eliminating altogether the gender predominance criteria, you have a situation where the determination of male and female job classes becomes what I believe to be a subjective exercise solely by way of historical incumbency, stereotyping or whatever.

In other words, there is no clear definition without the gender predominance clauses that are in here, and that in itself becomes a major battleground. Number one and number two do nothing but create significant difficulty for everybody in terms of identifying, one, how and where gender discrimination exists and, two, where it needs to be redressed.

Ms. Caplan: To that point, I think the parliamentary assistant explained it quite well. I would like to expand on that, and perhaps it would be helpful. This bill is seen as an anti-discrimination bill intended to address gender discrimination because of job ghettoization as well as the historic undervaluing of women's work as we know it. Yesterday, there was a very good discussion led by Mr. Baetz in which it was said it is not the intention of this bill to impose a comprehensive job evaluation system on each and every employer.

Therefore, what we have to do is tell them clearly what the expectations are of the legislation and define for them what it is they would be required to do. What this will do is say that the requirement is to look at the female job—in this case, female job classes, groups of jobs which are predominantly female—and what the test is for that. The test is the ratios that have been established which will identify female jobs and male jobs, and then say, "Just look at those."

It clearly states to the employers what their obligation is under this legislation. Without that, what you have then is the argument only on historical incumbency in the role, and it does not give them the parameters for dealing with this legislation as clearly as we have set out here because we have defined it with these ratios.

It is important for us to set those parameters in this legislation because of what it is intended to do, and I think there has been some misunderstanding around the general concept of the reason for the ratios. It was explained very well by the staff that it does relate to participation in the work force and also gives assistance in identifying what is considered a female-dominated job and what is considered a male-dominated job.

I would suggest that if we do not do that, then the basic premise of the bill, which is to address gender discrimination, will be lost.

Mr. Baetz: Might I ask a supplementary of Mrs. Caplan, who has made a very helpful statement, or of the parliamentary assistant or the staff? It has to do with the business of historical incumbency. As the bill now stands, how would the 60-70 sawoff be affected in a historical way? In other words, as of midnight the night it is given royal assent, is that going to be the determining factor of whether a class is included or excluded, or do you go back or do you reassess every few years? Obviously, the makeups of these job groups are going to be changing all the time.

Ms. Caplan: That is a very good question. In fact, since a great number of these plans, particularly in the first couple of years, will be negotiated with bargaining units, the employer and the bargaining agent will be able to look at the legislation for the test of identifying a female job class. They will also have the ability to say, as we heard, particularly from the construction industry: "We now have a woman in this job, but this is the first time. We have always had men in this job before; therefore, that should now be considered a female job class. It has traditionally been done by men"; or conversely: "Today we have a man filling a position that has been considered female work before. We would like to include it."

It will allow for that flexibility during the negotiations of it. We also know that, traditionally, certain types of work were considered women's work. What this does is say: "Here is the first look at it. If you presently have within your establishment a group which is traditionally female work, predominated by females today, then you know that you are covered by the legislation. If you do not, then you can take a look at those other parameters of historical incumbency to ask whether this is traditionally women's work and make your determination based on what was in place historically within your establishment."

It is not a question of a point in time, which is the reason you have the historical incumbency factor. What it says historically is not from a place in time, but what your actual experience in the past was.

Mr. Stevenson: If any form of gender predominance is left in the

bill, basically any time there is a decision to be made on historical incumbency, if it cannot be agreed upon in the establishment, then the commission is going to make the decision. Is that correct?

### 1440

Mr. Ward: I think it is more accurate to say that there is recourse to the commission in the absence of an agreement. In that recourse, the commission can take into consideration historical incumbency. You have your 60-70 per cent which established the female and male job classes. That is not a subjective exercise; that is an empirical exercise. There is a recourse under circumstances, if there is a lack of agreement or whatever, for historical incumbency to be used.

Mr. Stevenson: So the only guidance that an employer has in determining historical incumbency is basically whether he, she or they think the job was traditionally women's work?

Mr. Ward: That is right. The whole issue around the bill is the issue as much of occupational segregation as anything.

Mr. Stevenson: Whether a man or woman took over the job a year ago, two years ago or four years ago, is totally up in the air. It is a matter of-

Mr. Ward: If we get back to the example that was used by the construction association, the question was asked--I recall, because I know I asked it specifically--about one example of a woman doing a specific job that virtually everybody in the industry elsewhere has men doing. That is a fairly clear-cut example of historical incumbency. It was obvious they disregarded it. It works both ways.

Mr. Stevenson: Let us get back to something along the lines of our switchboard operators again. Let us say we have a situation where, in recent years, we now have a job class that is split approximately 50-50, but six years ago was 85 per cent women. What is going to happen there?

Mr. Ward: Within the legislation there is provision, in fact a requirement, in terms of the public education and materials that have to be presented. There is also an avenue through regulations to tie that down more finely. The example that you use of the 50-50, if it were secretaries and janitors, for example, I think most people can pretty quickly make the determination as to what historical incumbency is in those positions.

Mr. Stevenson: But those sorts of examples are not a concern. The fight is always going to be where the dicey issue is.

Mr. Ward: The point is that if you eliminate it, the whole thing becomes a matter of making a determination of historical incumbency. That is the only recourse.

Mr. Stevenson: Just a minute now. As I understand it, if you remove it, anybody can come forward and seek redress in regard to pay.

Mr. Ward: If you remove it, they can come forward and seek a redress, but in order to make the comparisons, how do you make a determination of the male job class and the female job class?

Mr. Stevenson: They can come forward for any reason. It is not just related to gender; it is related to any--

Mr. Ward: I understand that anybody can come forward. There are provisions where people can come forward even with the 60-70 per cent if they have a concern about historical incumbency. But I have to answer your statement with a question. Anybody can come forward, but how do you make the determination of what is a female job and a male job?

Mr. Stevenson: If we expand the bill to the extent of taking out gender predominance, then it is no longer a bill to address gender discrimination. It is a bill to address equal pay for work of equal value in the broadest possible form.

Mr. Ward: It is also a bill to address a lot of other issues. When the proposal is for an increase in the minimum wage and entry levels have to be increased, it is a bill to address low wages. It is not a bill to address female wage discrimination.

Mr. Stevenson: I guess it comes back down to a decision on what degree of intervention you are prepared to take into the marketplace.

Mr. Ward: I think we put forward what degree we are prepared to take.

Mr. Stevenson: I will get on with a few other questions here. Just so that I do not have to go through the mathematics here, can you give me the numbers as we--I think we have the numbers for the 60-70 per cent. How does the number of women covered change as we drop, say, to 50-50. What does a 10 per cent shift mean?

Mr. Ward: It would be very difficult to determine. That would almost have to be on a place-to-place comparison in order to make that determination.

Ms. Gigantes: Nobody knows.

Mr. Stevenson: So there is no way of going from there to estimating what the cost to the economy or business would be to make those shifts.

Mr. Ward: That is right.

Mr. Stevenson: Okay. That is a little frightening. When you have a situation with the bill as it currently stands or with some form of gender predominance left in, as I understand it, a woman who is outside of a female job class basically has no recourse under the bill.

Ms. Gigantes: You are talking about people who work. We are not talking about people; we are talking about positions.

Mr. Ward: That is right. That is one of the difficulties. We talk about job classes, not individuals. There is a recourse--

Mr. Stevenson: I am talking about a person in a particular job.

Mr. Ward: If we are talking about the whole process of putting in place a pay equity plan and all the mechanisms that are in there, and depending on the circumstances whether there is a bargaining unit or whatever, whether there is agreement or disagreement with the posted plan, there is recourse even in terms of the male and female job classes in the 60-70 per cent. There is a recourse with regard to historical incumbency. If that test were failed and somebody were not covered and there was not agreement in terms of the development of the pay equity plan, there is an avenue to appeal on that basis.

Mr. Stevenson: I asked that question just to lead into another one, quite frankly. We have a situation where a person believes that a certain job class may well be somewhat underpaid, and that person might wish to transfer into that job class, but by having the pay level of that job class redefined upward, that person would be very interested in transferring into that job class.

Is it possible for a person in the company or within government or whatever to lay a complaint from outside the job class to have that re-evaluated, with the idea of getting it increased so that the person might then be quite willing to transfer into that particular job, if an opportunity arose?

Mr. Ward: I am having trouble seeing your point. If you are talking about the mobility of the person to move from one job class to another, I do not see how the bill impacts on that in any way.

Mr. Stevenson: Let us take two jobs that are paid the same today. Let us take a woman who is in job A but who would love to have job B if job B were paid \$3,000 a year more, and she believes that job B should in fact be paid \$3,000 a year more. Under the bill as it is now written, she thinks that she might well have a good case to have that job class re-evaluated upward.

Can that person in job A force job B to be re-evaluated, or at least to go through that process, not necessarily have a positive end to it, but can the person request that the job class be put through the process to try to get the value of that job up so that the person could then transfer to job B.

# 1450

Mr. Ward: All the job classes go through the process during the development of the pay equity plan.

Mr. Stevenson: I am talking about under 100 people.

Mr. Ward: Under 100 people?

Mr. Stevenson: Where it would be a complaint-based situation.

Ms. Gigantes: Five years.

Mr. Stevenson: It is not going to happen tomorrow.

Mr. Ward: I am missing your point.

Ms. Caplan: The obligation for the under 100 not necessarily to produce a pay plan.

Mr. Stevenson: Yes, I understand.

Ms. Caplan: However, to look within the establishment at the gender predominance, and during the complaint phase, after the timing and the phase-in of the legislation have proceeded, a complaint can be brought by an individual on behalf of a job class if he or she feels the employer has not complied with the act.

Mr. Stevenson: You are missing my point.

Mr. Ward: Anybody can lay a complaint in the 100 and under.

Ms. Gigantes: Any employee.

Mr. Ward: Any employee can make a complaint. In assessing that complaint, the commission would then go back to the bill and the mechanisms within the bill would be looked at in making a determination as to the validity of that complaint.

Mr. Stevenson: So in fact, a complaint can be laid from outside the job class.

Mr. Ward: A complaint can be laid by an employee. If the discussion is focusing on the 60 and 70 per cent predominance test for those job classes, then I strongly suggest you assess those concerns you have just indicated in the absence of those thresholds; if you think it is a problem under the 60 and 70 per cent, then it is an exponentially greater problem in the absence of it.

 $\underline{\text{Mr. Stevenson}}$ : The question I am raising, of course, is related to how that varies as we alter the numbers and as we address the amendment that will be placed in front of us shortly and where these job definitions are basically leading us.

Mr. Ward: When you assess those numbers and the impact of the elimination of those numbers, what you then have is a system that, in my opinion, is primarily complaint-based, which requires an evaluation of each and every position. It then does not become just a gender-based comparison bill to redress discrimination against females; it becomes a bill to redress wage issues going both ways.

Mr. Stevenson: In many ways, that is a fair assessment.

Mr. Ward: It is far broader.

Mr. Stevenson: The process is open to everyone.

Mr. Ward: What is the purpose of pay equity legislation?

Mr. Stevenson: Purpose? I agree that going the route of taking out gender predominance expands the bill greatly, and I repeat, I think it all boils down to what degree of intervention you are prepared to put in legislation for various sectors of our economy, whether you are talking about the public service, extended public service or the private sector.

Mr. Ward: You know full well we are prepared to do it, but know full well also the issue we are trying to address, and that is the issue of occupational segregation. It is the issue of the wage gap between males and females. Maybe your position that it should go far beyond that--

Mr. Stevenson: I am not arguing that. I understand the point. In attempting to make up our minds, I want to ask some questions so I get your response on how it applies to the bill and then I can extend that on how it will apply to other situations to which we could possibly amend the bill.

Mr. Chairman: Does that complete your questions for now?

Mr. Stevenson: The parliamentary assistant got me slightly off track

for a moment, and I would like to look through my notes. If someone else has a question, I will stand aside.

Mr. Chairman: I am going to move to Ms. Gigantes and Mr. Charlton.

Mr. Stevenson: Okay.

Mr. Chairman: I can stand down your questions and go to Ms. Gigantes. We can come back if you have further questions.

Ms. Gigantes: When we look at this question of 60 per cent and 70 per cent, we have to recognize that we are restricting the applicability of equal pay legislation by putting these tests in the legislation. We do not know the degree to which we are restricting the applicability of the legislation, but we do know we are making a restriction. Effectively, when we accept the 60-70 per cent test, if women now are in a group of positions that they occupy at an incumbency rate of 55 per cent, we are saying they are going to have to go through a process to have an employer deal with the question of the equality of pay in their work situation.

If women are at an incumbency rate of 75 per cent in typically female work for one employer and the comparable job is occupied to the extent of only 65 per cent by males, we are going to be asking these women to go through a process of proving to the employer, and perhaps on appeal to the Pay Equity Commission, that the equal pay adjustments under this legislation should be applied to them.

When we discuss the legislation and how it operates with the 60-70 per cent test, there are a few items I think we should bear in mind. First of all, when we discussed the 60-70 per cent test as it applied to the public service of Ontario, there was agreement between the Conservatives and the New Democratic Party on Bill 105 to get rid of the 60-70 per cent test. We felt it was not useful, that it was limiting and that it was going to restrict the applicability of legislation that we wanted to see applied as far as possible to redress current imbalances.

In fact, the definition we are suggesting not only talks about historical ratios but also current ratios and the sex stereotyping of the job. That applies quite directly to service provided in the past by womenn and increasingly, by men, such as switchboard operations at Queen's Park.

We also have to be clear that under the legislation as it now stands, for several hundred thousand women who have access to only the complaint mechanism and who are very unlikedly to be members of labour unions, they are going to have to go through the process, without the assistance of a union, of trying to ensure that where there is an argument to be made on the basis of sex stereotyping of the work or historical incumbency because the 60-70 per cent test is not met on the female-predominant side, the male-predominant side or both--they will have to use a complaint mechanism without a planned process that is negotiated and initiated by the employer.

In cases where there are fewer than 100 employees, and there are hundreds of thousands of women in Ontario for whom this situation is true, either as individuals or as a group of employees, they are going to have to make a claim under the existing legislation, subsection 1(4), that the 60-70 per cent should not apply in their particular situation.

That is a very difficult thing for them to do. We have had evidence,

even from organized working women, that they would find it very difficult in situations that they can see might easily occur in their work place in terms of the 60-70 per cent test as being ones that they would have to dispute if a couple of positions changed in terms of the sex of the incumbents. We have been told by these women, who are members of labour unions, that they would have a difficult job trying to negotiate with the employers and then going ahead through a complaint basis to try to get the application of the legislation based on the existing subsection 1(4).

# 1500

That is why we would like to get rid of the 60-70 per cent test. We think it is a limiting, inhibiting and restricting element introduced into this legislation. It was in Bill 105, where it was rejected by the Conservatives. It is preferable that where there are organized groups in the work place, there be negotiation around which positions should have redress under this legislation. Where there is no union, the employer should make a proposal about the response in an equal pay plan, and if it has then to go to the commission, there is no onus on the employees, unlike other cases, to prove that having failed to meet the 60-70 per cent test, they should nevertheless be included within the protections of this legislation.

I point out too that when we talk about antidiscrimination, it does not mean that if there are only 55 per cent of women in a job class that has traditionally been female there is no pay discrimination going on. We know that. We know that if 80 per cent of the Queen's Park switchboard operators became male, there would still have been discrimination, probably between the switchboard operators and the parking lot attendants. We know that if 50 per cent of the Queen's Park parking lot attendants became female and there was a 50-50 split, it does not say discrimination no longer exists. "Employees, go prove it; the onus is on you." That is what this test does. That is why we want to get rid of it.

The famous case raised by the Council of Ontario Construction Associations, I will remind members of the committee, was on where a historically male job--I think it was the position of payroll accountant in a major construction office--became a female job. It was pointed out to us by the consultant hired by the construction association that this could switch the whole nature of the comparisons that went on within such an office. True enough. As it turned out, what had happened when a female became the incumbent in that position was that they had changed the nature of the position and they were not paying as much. In fact, as soon as there was a female incumbent there, the pay went down.

The Ontario Public Service Employees Union made the same observation to us in a rather startling multiple-regression analysis, which it displayed to us in chart form. They drew a line that could be associated as a curve of the association, the direct, positive association between the number of females in a group job and the lowering of the level of pay. They could actually work out a ratio. This is an artificial kind of mechanism, but they said: "For every woman you add to a job class, we know that the pay levels will go down by this amount. This is the direct association."

OPSEU also wished to get rid of the 60-70 per cent comparison, feeling that it could use other mechanisms to arrive at an agreement with the employer—in this case, the government of Ontario—to provide that there would be adjustments in the pay of the lowest—paid women in the public service of Ontario. Time after time, women's groups and people who represented working

women, labour union spokespeople, came before us and said the 60-70 per cent test is an artificial one, a restrictive one, and we should not have it operating in this legislation.

Mr. Charlton: I have two very brief comments to follow up my colleague. The first is that if you think back over the last 15 minutes and the examples we have discussed here, in every single case we had to forget about the 60-70 per cent and go to historical incumbency. That is ultimately what is going to have to happen in all cases. If we leave the 60-70 per cent in the legislation, it means that every job class that does not meet either the 60 per cent threshold or the 70 per cent threshold in terms of its comparable is going to become a disputed item. All those that do not meet the threshold, even if they can eventually get equalized under this legislation, every single one of them is going to have to be a disputed item.

My last comment is simply that I had a lengthy discussion on this very issue with the parliamentary assistant and with the member for Oriole (Ms. Caplan) outside yesterday afternoon. We obviously disagree about whether the 60-70 per cent is going to be an assistance or a detriment to the process we are embarking on. My comment is simply this: All those who have had experience out there in the real world in terms of trying to negotiate the kinds of things we are talking about here are telling us that these will be road-blocks, impediments to achieving what the intent of the bill requires they achieve in those negotiations. We are not listening to those who have to do the job.

Mr. Polsinelli: Mr. Charlton, I have difficulty understanding your line of thought and that of Ms. Gigantes. You are telling us to listen to the people who in the real world—the union movement predominantly—have come before us and told us they do not want the 60-70 per cent figures in it. They do not want to see those.

Ms. Gigantes: The Young Women's Christian Association, women's business and professional associations--

Mr. Polsinelli: You have also told us that all those categories outside the 60-70 per cent automatic inclusion would have to be negotiated, would have to be left up to the bargaining process. By eliminating the 60-70 per cent automatically included categories, what you are doing is throwing everything up to the bargaining process. If we look historically at the question of gender discrimination and we look at the union movement's track record in that field, it has been dismal. Through the collective bargaining process, they have not been able to close that gap.

What you are telling us is to leave it all up to the bargaining process, because as long as there is a law that says there should be no gender discrimination, then the bargaining process will take care of it. That is why I am having great difficulty following your argument.

Ms. Gigantes: Only 350,000 women in Ontario, or close to that, are organized--about 400,000. We are not dealing with any more than that. We are not talking about bargaining agents.

Mr. Polsinelli: If you look at the unorganized sector, with no representatives to speak for it, in that unorganized sector you have a certain number of categories that will fall within female and male job categories and will be mandated to have a comparison.

Mr. Charlton: Take the time to look through our amendment. We have dealt with all those questions.

Mr. Polsinelli: What you are saying is to leave it to the bargaining process.

Mr. Charlton: Take the time to read. That is why we have submitted a package.

Mr. Chairman: I believe the question is being addressed to you and you will have ample time to respond in a moment. Mr. Polsinelli has the floor.

Mr. Polsinelli: That was my question. If he is advocating leaving it up to the bargaining process, if he is advocating--

 $\underline{\text{Mr. Charlton}}$ : My answer is simply, read our amendments. We have dealt with the scenarios that you have set out by the process of review officers and appeal set out in our amendments.

Mr. Polsinelli: So you are saying to leave it to the appeal process.

 $\underline{\text{Mr. Charlton:}}$  No, that is what you are leaving it to with the 60-70 per cent.

Mr. Ward: Getting back to the whole issue of the 60-70 per cent establishing a firm guideline for employees and employers to understand where the comparisons have to be made, and leaving aside the other two aspects for dealing on a complaint basis through the review office a consideration on historical incumbency, a concept that is not too difficult to comprehend when you consider the number of women in 20 of the 500 occupations that exist, I do not see how your argument, in terms of eliminating this in any way, for that matter, does a heck of a lot in terms of coverage.

Nobody can tell me that employers are not going to go out and say, "I have a job category here that is 90 per cent occupied by women," or, "I have three or four job categories that are 90 per cent occupied by women, and therefore they are the female job classes." That is less coverage, not more coverage.

Ms. Gigantes: Let me put it this way because you have stated your position quite eloquently. Where there is a group of women who will not meet the test, either because there is not a 60 per cent female incumbency within their job positions or there is not a 70 per cent male incumbency in the most comparable job positions, what this legislation does in its current form is to put the onus on the employees to prove that, in spite of the fact that this legislation defines comparable groups in terms of those incumbency ratios, they can make a case against the employer's claim that the legislation need not be applied.

# 1510

Mr. Ward: And your proposal places an onus on the employees to have to make that case every time.

Ms. Caplan: In every case.

Mr. Ward: Every time.

Ms. Gigantes: I think that if employers understand that what is going to be appealable is the historical incumbency--

Mr. Polsinelli: It is now.

Mr. Ward: I understand the concern that was expressed, particularly by some of the labour groups, relating to the threshold levels, and I also have a much greater faith in their ability to be able to negotiate those kinds of levels, which they can do. But look at it from the perspective of unorganized working women and do not tell me they have every bit as much ability to bargain those levels, because I do not believe it.

Ms. Caplan: The unorganized are the majority, and they do not have--

Mr. Charlton: They do not have plans.

Ms. Caplan: No, for over 100 they do.

Ms. Gigantes: A quarter of them do not have plans.

Ms. Caplan: This is where we fundamentally disagree. I think what we are doing here is defining the obligation and ensuring that it will be done.

Ms. Gigantes: I believe we are ready to vote. Further discussion of this matter is probably not going to change minds.

Mr. Baetz: I would like to make one or two comments and ask a question in the process. In the very recent discussion here, we have been talking about the real world out there, and that is what this legislation is designated and designed for.

If you look back over the last two years or so, some of us more than others, or some of you more than others, have met the real world about this very issue of pay equity. We know, from what the real world has told us, that it has been a very touchy, burning public issue. It has been somewhat unknown to most of the people, and I would include myself in that.

It has been a very tough learning experience for a lot of people, but I have the feeling that after having gone through a lot of agonizing and divisive exercises in the last year or year and a half, including the tremendous leap of faith, and that is what it was, to extend this concept from the public sector over into the private sector—I think we all are aware of how big a leap of faith that was and how it did, in fact, shake up a lot of people; there is a lot of heartburn over that, as we all know—I, at least, get the sense that in the last six weeks or two months, there is a consensus building out there among the traditional proponents of this concept. Thank God they have been there. They have been preaching this for years, and the rest of the world has not really been listening. I suppose a lot of them did not want to hear it and a beck of a lot did not understand it.

I think where we are at now is that there is some fragile consensus out there, including the employers, many of whom were here. Their presentations to this committee have been a very valid learning experience for all of us. I think the employers have gradually begun to understand, very reluctantly, no doubt, for many of them, that in fact this is workable; it can work. They have been reassured by us and by briefs and the draft legislation that there are certain parameters in this legislation that will make this workable and that it is not open to everybody.

So here we are, having gradually, painfully developed this kind of consensus, and my real concern now is that at this point in time, on the very eve of when we have to get this back into the Legislature, we are suddenly saying to the world, "Yes, but our methodology, our approach to going at this, is going to be radically changed."

That might have worked in the public sector, where you are dealing with a few employers, but now we are dealing with thousands of employers out there, and we are saying to them: "We are going to change what we have been telling you all these weeks and months. We are changing it fundamentally. We want you to understand and we want you to have faith. Just listen to us and everything will be fine."

I do not believe they will accept it as being fine. We are going to open up the whole debate once again, and from what the parliamentary assistant and Mrs. Caplan have said to us, it moves away from gender discrimination to something vague, but much broader. I would really be very concerned that at this point in time we are going to open this up in the way that has been suggested, because I think public understanding, public acceptance of this thing would be down the drain. I really do.

Surely, as legislators, we have to have some sensitivity to presenting the general public with something that it does understand and can accept. This legislation is not carved in stone. If it works, and we expect it will, it can be expanded as time goes on. It can be improved, adapted, amended. But I have the greatest discomfort with the proposals being made here, for these very reasons.

Mr. Chairman: We are close to taking the vote. I have one more speaker on my list, and that is Mr. Stevenson.

Ms. Gigantes: Why did you not (inaudible) in the first place and save us all this time?

Mr. Baetz: I am listening; I always listen.

Mr. Stevenson: We have to ask a few questions and make sure we understand the workability. We are concerned how this legislation will apply. I have one last question from the same line of questioning that I was on some time ago, on the workability of this legislation or whatever amendments there are to it. Again, this relates to the private sector, and I suspect this situation may come up more often in companies of under 100 employees rather than over.

First, before I get into the question I really want to ask, if a woman is concerned about the pay scale in a particular job or job class, is she going to run around the company and count noses and try to estimate who might be in that job class and how many men and how many women might be working in what she thinks is that job type? How is she going to try to get some idea of whether she has--

Mr. Ward: I think most women working in a job ghetto know when they are working in a job ghetto. It is that simple.

Mr. Stevenson: If it is a real ghetto, yes. You keep talking about these extremes that stand out with beacons on them. I am talking about the ones that are somewhat more marginal and can be a real irritation to a person in the work place.

Mr. Ward: If they are marginal and women believe that they are suffering from gender discrimination, that the work that they are performing is undervalued in relation to the work of men within the same establishment, then they can file a complaint and they are entitled to a process that will make that determination. There is no need to count noses.

Mr. Stevenson: Let us say they take that step and decide they want to be compared to a certain man's job or man's job class. Let us assume the employer says: "No, we do not think that is the best comparison in this place. We think you should be compared to job C." They have a disagreement and they go to the commission. I assume it is then up to the commission to decide which would be the best comparison. Is that correct?

Mr. Ward: The commission makes a determination of whether that job is undervalued on the basis of skill, effort, responsibility and working conditions, and a determination is made.

Interjection.

Mr. Ward: No, but he is beyond any of that. He is at the commission.

Mr. Stevenson: Let us say it goes to the commission. First, we have to have a decision as to what jobs are going to be compared.

 $\underline{\text{Mr. Ward}}$ : First of all, you are assuming that there has been no other opportunity of reconciliation throughout the course of the process, that there has been disagreement throughout and they have gone to the commission. That is given.

Ms. Caplan: That would not, in fact, be the way it would work. Part of the role of the review officer--

Mr. Ward: No, but that is the assumption that is made.

Ms. Caplan: But that is an erroneous assumption. The process will be that the review officer will be there to assist and to mediate.

Mr. Stevenson: I accept that.

Mr. Ward: Hypothetically, he has gone through all that.

Mr. Stevenson: Basically, I suppose to some degree I am taking the worst-case scenario. I am taking a confrontationist situation right from the start. We have a situation that has gone to the commission. First, there is some argument and again, I would say, no agreement as to which job class will be compared to the complainant's position.

Let us say, job C or the one that the employer suggested is selected as opposed to the one that the employee suggested. If the employee clearly does not think she has nearly a chance of winning or a chance of getting a significant wage adjustment, then what? Can she withdraw the complaint then or, once the commission has a hold of it at that level, does the whole process goes right through?

Mr. Ward: To begin with, it is not going to be forced through from beginning to end if it is a frivolous exercise with no reasonable hope of making an appropriate comparable assessment.

Mr. Stevenson: So common sense is going to prevail through the whole thing.

Mr. Ward: It can be withdrawn, or whatever.

Mr. Chairman: Are there any further questions?

Mr. Stevenson: No.

Mr. Chairman: All right. If the committee is prepared, we can vote on the definitions.

Mr. Ward: Just one more point: It probably is not substantially different from the exercise that we go through in the employment standards branch, where those kinds of determinations are made as well.

Mr. Stevenson: I think it is somewhat different, as I understand the employment standards branch.

Mr. Ward: I do not know. You would have to show me. If I made all the hypotheses you made on a complaint under the employment standards branch, I think we would have begun at the same point and ended at the same point.

Ms. Gigantes: I would like to place the amendment of which I gave notice. I believe committee members have a copy of it. I have been warned by legislative counsel that, in fact, the amendment would be more appropriate to subsection 1(4), and I believe that to be true. However, I feel that if I place it here, the chances at this stage that it is going to be supported look to me like two against several. I think it is going to go down. If legislative counsel does not mind a bad precedent, I would just as soon deal with it now, put it on the table and get it over with.

Mr. Chairman: We can deal with it by having Mrs. Caplan move the motions on those definitions.

Ms. Gigantes: I would like to place the amendment as I indicated.

Mr. Chairman: Would it be okay if we had the motion moved first and then the amendment?

Ms. Gigantes: Absolutely.

Ms. Caplan: Just for guidance, would you like me to read the definition as it is in the bill, or is it sufficient to state the definition as printed in the draft?

Mr. Chairman: As in the bill.

Ms. Caplan: In that case, I will move the definition of "female job class" and clause (a) as set out in the definition of "female job class," and the definition of "male job class" and clause (a) as set out in the definition of "male job class," as printed in subsection 1(1) of the bill.

Mr. Chairman: Is it clear what we are doing? Ms. Caplan is moving "female job class" and clause (a) and "male job class" and clause (a).

Mr. Ward: As I indicated to you this afternoon, we had some amendments we wanted to table relative to the commission and the agency, more

clearly defining the distinct functions of the Pay Equity Commission: one as a hearings tribunal and the other as a proactive kind of mechanism. For that reason, we are deleting the (b) clauses in the consideration of this, because I think the commission would become a hearings tribunal when we table this package.

Ms. Gigantes: If you are going to do that, then why the devil did you insist on dealing with the definitions? What are you saying? You want us to yote for--

Mr. Ward: We are dealing with the 60-70 per cent.

Mr. Chairman: That is all we are dealing with at this point: the 60-70 per cent.

Ms. Gigantes: I understand what the intent is here, but why was there an insistence on dealing with the definitions when, in fact, you are moving an amendment to them?

Mr. Ward: We are not moving an amendment to the definitions. What we are changing is the word "commission" to the words "hearings tribunal."

I would be quite happy to let the whole of clauses (a) and (b) stand, if it is understood that there is an amendment coming changing "commission" and that the clauses may have to be reopened.

Ms. Gigantes: You see how much easier it would have been to deal with this matter under section 17? You would not have to do this.

Mr. Ward: I have never seen where anything you have suggested was easy to deal with.

Ms. Gigantes: Take a look at section 17. That makes it much easier. Does that deal with the matter simply or not? I ask you a simple question.

Mr. Ward: No.

Ms. Caplan: What we are talking about is a possible change of the word "commission." It is up to the committee to determine at this point whether it wants clauses (a) and (b) or just the (a) clauses. We are prepared to go with either one.

Mr. Chairman: The way I had outlined it—could I begin again? For purposes of simplification I had suggested that we have the male in clause (a) and the female in clause (b). There is going to be the change to "hearings tribunal" under clause (b). Is that correct?

Now, I understand through legislative counsel that we can vote on clauses (a) and (b) now, with the firm understanding that, when we get to the question of the hearings tribunal, if that is passed, we will simply come back and open up that one small section of the (b) clauses to deal with that.

Mr. Baetz: Might I ask why? What is the merit in dealing with the (b) clauses now? Why not just deal with the (a) clauses?

Mr. Ward: I think there are more. You have amendments relating to the agency.

Mr. Baetz: That is right.

Mr. Ward: When we came in here I suggested to the chairman that I would like to table the package, and perhaps we could have incorporated them there; but we are dealing with two distinct issues: one is the agency and one is the definitions of female and male job classes.

Mr. Baetz: Why do we not deal with the job classes now and leave the other until later?

Mr. Chairman: At the moment, that is the only motion I have before me.

Ms. Gigantes, do you have an amendment to that motion?

Ms. Gigantes: If I knew what the motion was--

Ms. Caplan: The motion concerns the "female job class" definition and clause (a) and the "male job class" definition and clause (a).

Ms. Gigantes: Then my motion will be to vote against the (a) clauses. I am simply saying to the members of the committee that we will vote against the (a) clauses. That is it.

We would change the (b) clauses, and I guess we will have to make that offer when the (b) clauses come back to us. The clerk will remind us.

## 1530

Mr. Chairman: All right. We do not have an amended motion. We have a straight motion on the (a) clauses of male and female job categories. I will call for that motion if you are ready.

All in favour of the motion? All those opposed?

Motion agreed to.

Mr. Chairman: I have had a lot of requests for a guick break, so let us do that now.

Ms. Gigantes: Will we be moving next to section 7?

Mr. Ward: Why do we not go to section 5? It deals with the same issue.

Mr. Chairman: Let us agree on something.

Interjections.

Mr. Chairman: We are spending more time arguing where we are going to start from than--

Mr. Ward: She agreed, I think.

Mr. Chairman: Do you agree with section 5, Ms. Gigantes?

Ms. Gigantes: No, we are going to have problems with section 5.

Mr. Chairman: Okay. We will come back and deal with section 5.

Ms. Gigantes: I said I think we are going to have problems with section 5.

Mr. Chairman: I am sorry. I thought you had agreed to section 5. We will come and discuss what we are doing to deal with.

The committee recessed at 3:31 p.m.

1550

Mr. Chairman: I recognize a quorum.

Ms. Gigantes: I have one large and one small procedural matter I would like to raise.

First, I would like to apologize to the parliamentary assistant. When we had the contretemps about how we were moving to amend the definitions that relate to the 60-70 per cent test of female and male predominance, I can only excuse my outburst by the fact that I did not understand the process we were going through at that stage. When I suggested to him that he would be better off dealing with section 17, I was incorrect. I had the wrong section number. Further, when I then amended that and said he would be better off dealing with section 5, I was incorrect again, because it is dealt with more clearly in the way in which he wished to proceed. My apologies.

Mr. Chairman: We have all had bad days, Ms. Gigantes.

Ms. Gigantes: This is a great day for me. I just wish to apologize.

The second small matter is that the parliamentary assistant has proposed we deal with section 5 now, and having yelled before that we should, I propose that we set down section 5 at this time. I will explain why. With our having gone through the decision on the 60-70 per cent test and having approved the format in the bill, I would like to make an amendment to section 5 that I think is also related to the proposed government amendment that deals with how to define a job class and the concomitant amendment affecting how to deal with job rate.

If it is agreeable to members of the committee, I ask that we try to look at all those together. I will get a motion prepared so that we can discuss it and the interconnections at a later time.

Mr. Chairman: Again, the chair has no objection to that.

Mr. Ward: Neither do we. I am not quite sure of the point you are making as it relates to section 5 but I do not think it is imperative that we proceed with that, if somebody wants to make a suggestion as to where we go next.

Also, the apology is accepted but not necessary. I am not that sensitive, but thank you anyway.

Ms. Gigantes: You are welcome.

Mr. Chairman: If it is agreed that we stand down section 5, we can go back to section 2 or we can take another section.

Ms. Gigantes: I suggest section 7, if that is agreeable to committee

members. It deals with the question of coverage and exemptions that might apply to coverage.

Mr. Chairman: Mr. Baetz, have you any direction for dealing with section 7?

Mr. Baetz: Section 7? No.

Mr. Ward: At what point can I table those agency amendments?

Mr. Chairman: As far as I am concerned you can table them now, if you want, before we deal with section 7.

Mr. Ward: Just so we avoid the circumstance we got into at the close of our discussion on those definitions, I am tabling with the committee a number of amendments that relate to the commission, the agency amendments that more clearly define their role so everybody will have those available. If it recurs in the bill, it will be a lot clearer if we have to change "commission" to hearings, tribunal or whatever and you will know what it is all about. They will be circulated.

Mr. Chairman: All members of the committee are aware of what the parliamentary assistant has indicated with respect to those amendments, and they shall be deemed tabled, not moved but tabled, and we will get to the specifics of those amendments as we go through the bill. Ms. Gigantes, we are going to section 7 now. Since you proposed that we deal with the section, I will allow you to lead off.

On section 7:

Mr. Chairman: Ms. Gigantes moves that section 7 of the bill be struck out and the following substituted therefor:

"7. This act does not apply so as to prevent differences in compensation that are due to a formal seniority system that does not discriminate on the basis of gender."

Ms. Gigantes: You will find this motion on page 24 of the New Democratic Party's amendments. The effect of this motion, as any committee member can easily see, is to remove all the exemptions that are provided in this bill under section 7, except that of a seniority system that is gender free. In procedural terms, I think it might be useful if we went through the clauses and discussed each in turn so that we can present succinct arguments for the position we are presenting, which is that only gender free seniority systems should be counted as an exemption.

Mr. Chairman: So that we are all up to speed on where we are, this will be on page 24 of the NDP amendments, and if you have that, that is the amendment that now has been moved by Ms. Gigantes.

Ms. Caplan: A procedural motion.

Mr. Chairman: Yes.

Ms. Caplan: Before you deal with the amendment, can I move clauses 7(1)(a), (b), (c), (d) and (e) and subsections 7(2), (3) and (4) as printed in the bill? We might as well do the whole of section 7.

Mr. Chairman: Yes, that motion is in order. Ms. Gigantes has moved an amendment to the main motion which now has been proposed by Ms. Caplan. Discussion on the amendment, if any?

Ms. Gigantes: I am willing to go through each of the clauses as printed in the bill and present a brief argument on why I believe we should remove them as exemptions, if that is acceptable. We are dealing with section 7 to which we have placed an amendment to the section moved by Ms. Caplan. Our intent is to eliminate every exemption except "a formal seniority system that does not discriminate on the basis of gender". You will find our amendment on page 24 of the NDP amendment sheets. Our motion essentially amounts to clause 7(1)(a).

If I move to clause 7(1)(b), which is an exemption provided for "a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program," I will simply suggest to members of the committee that we can expect to see a great many more people employed and categorized as temporary employees in a training or development assignment than we now see in Ontario if we provide that exemption to employers.

Moving to clause (c), which provides an exemption for "a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender," I do not think that anybody alive has ever seen one. We have been told by employers before this committee that there are classes of job in which the top categories of those classes, the top levels of those series of jobs, are in fact merit pay levels, but I do not think that anybody has brought forward any evidence that there exists anywhere a merit compensation scheme that is based on formal performance ratings and does not discriminate on the basis of gender.

We know well from the studies that have been made in the field of merit that merit is in the eyes of the beholder. We also know that in the employment field, in the academic field, it has been proven in scientific control group studies that if you assign a female name to an academic paper and ask people to mark it and you assign the same paper with a male name attached to it to a similar group of markers, even if the markers are female, the quality given in terms of writing, the merit assigned to those papers, will differ substantially because one has a female name attached to it.

We know that in many areas, the merit that is seen in the tests that are normally associated with so-called merit-decisiveness, forcefulness and so on-is characteristic of males. It is typical of males. I do not think anyone can present to us an example of a merit compensation scheme that is devoid of discrimination on the basis of gender. I think it is an invitation to employers to use so-called gender free merit plans as a reason for saying the application of this legislation to their place of employment should be limited.

#### 1600

On clause 7(1)(d), we know that even the proposal of equal pay legislation has prompted many employers to start a process of red-circling. We can expect that process to continue, particularly if, as in this legislation, we are phasing in the application of the legislation over a period of many years.

Usually, the process of red-circling will be one where male employees,

having been compared to female employees, will be determined to be overpaid. Their positions will be red-circled; that is, their pay will be held constant until the female employees with whose positions they have been compared catch up in terms of pay levels. This goes against the very principle of providing equal pay, which is that male wages will not be affected in any way by a determination that there must be an adjustment to female wages.

Clause 7(1)(e) is a quite extraordinary exemption that allows employers to claim there is a temporary inflation in pay rates. You can bet your life those are going to be male pay rates because of a skills shortage. The employer can say he is encountering difficulties in recruiting employees with the requisite skills for positions in a job class and has to pay males more and, therefore, female positions cannot be considered comparable as far as pay is concerned. This undoes the concept of providing equality in pay levels for positions that have equivalent skill, effort and responsibility and that are done in comparable working conditions.

Subsection 7(2) says that once we have gone through the whole process of adjusting male and female wages and inequality arises between comparable male and female jobs—these are jobs that under this legislation have been compared and found comparable—the employer can claim that the reason for the inequality is that there is a difference in bargaining strength between men and women. Employers claim that now and if we allow them to claim it in the future, all the work we are doing here will be undone.

Subsection 7(3) allows an employer to exempt a position when that position is called casual or on-call. This is in distinction to the provisions of subsection 7(4), which attempts to provide that regular part-time work or part-time work that is carried out for more than one-third of full-time shall be included within the ambit of this legislation.

We know that 500,000 women in this province work part-time. If we provide employers with a way to exempt part-time positions by having them fall under subsection 3 as opposed to subsection 4, employers will be tempted to use subsection 3. I would like to encourage committee members and remind them that we had many delegations speak to us on this question.

The increasing number of women who wish full-time employment but have to seek part-time employment should not be further penalized by being made into casual on-call workers by the incentives we might provide, were we to pass subsection 7(3).

Mr. Stevenson: Of course, this is a section on which we have had a great deal of discussion. In going down through these various subsections of section 7, as Ms. Gigantes has just done, we are very much aware that virtually every one of these sections leaves an opening for some abuse, and as she has fairly clearly stated, they have been and may well continue to be used in that way.

In the skilled labour shortage area, the nurses came in and made a case that there are very clear indications of where men have probably benefited from increases of pay at times of shortages of skilled labour, and that most people would agree that the nursing profession, at least, has not benefited to any significant degree. I do not know whether you can say nurses have not benefited at all, but certainly it has not been of any major benefit to them to have a skills shortage. There has been no very significant increase in salary.

As a party, we have always supported the idea of merit pay. We have no intention of varying from that. Again, I suspect that one can bring forward examples of where that may well have been abused on a gender basis. However, it seems to me that the idea of merit pay is very much a part of how we see that businesses should be run. It should be a component of compensation, particularly in the private sector and as much as possible in the public sector as well, so we will not be supporting any amendment to remove that.

I believe I am correct in saying that we have supported red-circling. It also puts forward an opportunity for abuse, but I think to remove it totally as a tool for management to use is to create real problems in setting pay levels within the system, and we will not be supporting the removal of that particular clause in the bill.

## 1610

We have heard a lot of discussion on bargaining strength prior to the bill coming in and the effects on bargaining strength after. It is an issue we could spend a great deal of time discussing but I am not going to take a lot of time. It comes down to a matter of judgement and how it should be handled.

Where you have organized workers, I think one can build a pretty strong case that bargaining strength should be considered as one of the factors that determined a particular rate of pay prior to bringing in the bill. However, we are prepared to go with the section as written.

Mr. Chairman: Is that the conclusion of your comments?

Mr. Stevenson: No, there was one other comment I wanted to make here on a particular topic. I will pass for a moment, because I have forgotten what comment I wanted to make. Let me read it over.

Mr. Chairman: All right. I have Ms. Gigantes, Mr. Barlow and Mr. Stevenson, if he wishes to have the floor again.

Ms. Gigantes: I think I failed to make clear how I look on this section. This section is not designed to remove from employers the right to use any of these methods of management. This section says only that employers can use as an excuse, in the implementation of equal pay legislation, the use of these management techniques.

It is a very important distinction to make. For example, when Mr. Stevenson says to us that, in dealing with clause 7(1)(d), the Conservative concern would be the removal of red-circling as a management tool, that is not what I intend to propose. What I intend to propose is to remove that as an excuse by an employer for a failure to provide the equal pay adjustments that we are looking for under this legislation.

I do not know if that is a helpful way of putting it. I feel that we have to look upon section 7 in the context of the application of this legislation.

Mr. Stevenson: Possibly it is just a matter of semantics here. I think I understand what you are saying. I thought I addressed that, in saying it is an opportunity, and I agree that it presents a tool for employers to abuse what this bill is trying to do or not to conform to what this bill is trying to do. It gives them an out. I suppose that is one way of putting it.

Mr. Chairman: Mr. Stevenson, I will get back to you. I wonder if we could have the parliamentary assistant get in. I think he would like to explain from the government's perspective what the interpretation of that is.

Mr. Ward: I have a little trouble grasping Ms. Gigantes's last point. If your concern is that there is nothing wrong--I will not put it that way. It is allowable to have differences in compensation on these bases between males and males and between females and females, but you cannot use these functions to have differences in compensation between female and male job classes.

Ms. Gigantes: Let me explain what I mean. If an employer has positions A, B, C and D in a work place, and for the purposes of this bill you are going to compare positions A and C, then I want to make sure the employer is not allowed to use red-circling to hold the wages of group C, the male group, while the application of this legislation was going on. That is what section 7 speaks to.

Tf I can go on just for a second, that does not mean it will affect the employer's complete ability to do red-circling around positions B and D. It does not remove it as a management tool. What it says is it is not a practice that will be allowed to inhibit the application of this legislation.

Mr. Ward: I do not believe it is a practice that inhibits the legislation. If you look at the practical implications of the legislation, you talked about merit compensation systems that have gender bias built into a lot of them, and most people would concede very many merit compensation systems do have gender bias built into them.

In the application of the act, however, if somebody makes an exemption under these conditions or under these clauses and there is a dispute or complaint lodged, the employer then has an onus to demonstrate in fact that this merit compensation system is free of gender bias. I do not think that has ever in reality existed in any other context.

I am really having trouble seeing your point. If you are saying it is okay to have merit compensation plans, or it is allowable and okay to have seniority systems and okay to red-circle, but you cannot do it in relation to the female and male job classes that are being addressed by this legislation, although you can do it everywhere else, I do not understand that.

Ms. Gigantes: Let me ask you if you agree that as far as we know, merit compensation schedules are schedules which are inherently sex-biased.

Mr. Ward: I would not say inherently. That is the difference. I would concede that a lot of merit compensation systems have sex biases built into them, but they are subject to a test under this legislation and there is an onus to show that they are free of gender bias. I think the fundamental difference is whether they are inherently gender-biased or whether many of them are in practice gender-biased.

I would not say they are inherently. I think you can have a merit compensation system without gender bias. I think they do exist, and I am quite prepared to concede that a heck of a lot of them have a lot of gender bias in them as well. I did not want to make a semantic argument, but I do not believe they are inherently gender-biased.

Ms. Gigantes: I think the approach is an approach which invites

employers to try to use the exemptions, and I think the approach is an approach which can, in many instances, particularly in unorganized work places, be used to the detriment of women who should be getting protection under this legislation.

Mr. Ward: I think there is a fallback and a mechanism and an onus that exist that never existed before.

Ms. Gigantes: I would like to address a couple of other points that Mr. Stevenson made, particularly as they relate to the question of subsection 2. I would like to understand from him whether the Conservatives, at this stage, are looking at the process involved in Bill 154 as a one-shot process.

# 1620

We know very well that the same conditions that, in many cases, helped to produce pay inequities that we would judge to be unfair have been rationalized by both the male employees and employers on the basis that male employees have greater bargaining strength. We also know that part of the reason they have greater bargaining strength is that, most often, women do not have any bargaining strength.

Most often, women are not in unions. Males are in unions in Ontario work places to a much higher degree than are females. Only about one in five women, and far fewer than that in the private sector, in Ontario belong to labour unions. How could their bargaining strength ever be equivalent to those of male comparable positions when there is a history of so-called bargaining strength associated with male positions, and when very often, more often than with female positions, the males involved in filling those positions are members of trade unions?

I think that if we accept the exemption under subsection 2, we accept that 10 years from now we are going to have to do this business all over again. We are going to have to start all over again because the discrepancies will arise again and will have been excused under subsection 2. An application to the commission on appeal will be limited by the fact that this legislation, if subsection 2 is there, says that we can have comparable jobs paid in noncomparable ways as long as an employer can indicate that there is a difference attributable to bargaining strength.

Do we want to do this all over again 10 years down the road? Do you want your sons to have to deal with this all over again?

Mr. Stevenson: No. It is your daughter.

Ms. Gigantes: Let us do it. Let us get rid of that section that binds the commission or, in your amendment, the employment standards branch which will say: "Sorry, we cannot do anything about that. Go and talk to your legislators. Get them to change Bill 154 by taking out subsection 7(2), and then we can hear an appeal."

Mr. Stevenson: It would be nice if everything was all that simple. You have raised a question, of course, that is of concern to many of us. In the example that Mr. Rives raised, he showed how--I guess it was not really a difference in bargaining strength--a difference in the direction of bargaining had created two different pay scales across job classes within two different bargaining units in a company. Then he imposed on those two pay scales this legislation, basically, as I understood it. In four years with the same sort

of bargaining thrust, the same difference in pay scales had come about all over again, as I understood that one table in his presentation.

As you understand this bill, what happens after seven years? Let us say a difference develops again. What is the position of women in a particular job class who have been through all this? They are organized—I guess it would not necessarily matter whether they were organized—but what happens after seven years?

Mr. Ward: I think you are referring to the review process that is built into the legislation. It establishes a mandatory overhaul, refinement or adjustment should the experience of the previous seven years dictate that. It does not mean there is no coverage under subsections 6(1) and 6(2):

Mr. Charlton: Section 7 relieves section 6.

Ms. Gigantes: If somebody goes under section 6 to make a complaint at year 10 that there is unequal pay for comparable work and the employer says, under subsection 7(2), "The reason we have unequal pay after 10 years is that there is a difference in bargaining strength," the Pay Equity Commission will say: "We agree the employer has made the case. It appears there is a difference in bargaining strength." That is the only mandate the commission will have.

Mr. Polsinelli: But then it is not gender discrimination, is it?

Ms. Gigantes: Do you think this bill ends gender discrimination?

Mr. Polsinelli: No.

Ms. Gigantes: Then let us think about what we are talking about.

Mr. Polsinelli: That is what it is attempting to do, but the scenario you raised is not a situation where the differences in pay are due to gender discrimination, by your own definition.

Ms. Gigantes: You will have to explain that to me slowly.

Mr. Polsinelli: If after 10 years' time the employer can prove before the commission that the differences in pay at that time are due to differences in bargaining strength, then the proof is that the difference in pay is not due to gender discrimination; it is due to the difference in bargaining strength.

Ms. Gigantes: You do not think the differences in bargaining strength reflect gender discrimination.

Mr. Polsinelli: That is an assumption you can choose to make; it is not an assumption I make. I accept that there are some stronger unions and some weaker unions. Some bargain harder than others. The ones that bargain harder may accept a more favourable settlement, but that is not gender discrimination.

Ms. Gigantes: This is either semantics or incredible naïveté.

Mr. Polsinelli: On whose part?

Mr. Charlton: Why are we adjusting them upwards in the first place if it is just bargaining strength?

Ms. Gigantes: Why do we not just say to employers, "If you can prove it is bargaining strength, you do not have to make a pay adjustment"? Mr. Charlton is right. According to you, if they can prove it is bargaining strength, there is no discrimination.

Mr. Polsinelli: There are many problems that this world has. This act is simply trying to cure one of them. It is going a small way towards curing that problem.

Ms. Gigantes: Only pay.

Mr. Polsinelli: It is going a small way towards curing the problem dealing with gender-based discrimination practices. That is what this bill is trying to accomplish.

Ms. Gigantes: Once you put in subsection 7(2), after a time the bill will no longer be applicable to that one element of inequality we are trying to address, which is pay. It is not the rest of the world; just pay.

Mr. Polsinelli: I disagree.

Ms. Gigantes: If we are going to move forward on this, perhaps rather than dealing with my subamendment, it would be more useful to go through section 7, subsection by subsection.

Mr. Chairman: Effectively, your motion for clause-by-clause calls for the removal of all of section 7. I do not know that there is necessarily consensus on the removal of all or any of the parts of section 7. However, your amendment to what is proposed is that all of section 7 be struck out and that your replacement for section 7 be added. How do you wish to proceed on that?

Ms. Gigantes: I can withdraw my amendment to permit what consensus there may be about amendment to be achieved through a clause-by-clause vote. In other words, I am making a proposal that we vote on clauses 7(1)(a), 7(1)(b) and so on, if that is acceptable.

Mr. Chairman: This is a complicated section. I am trying to be helpful to you as well as to the committee members because the way your amendment has been placed, it calls for all or nothing.

Ms. Gigantes: That is why I am proposing to withdraw it.

Mr. Chairman: Okay. What are you replacing?

Ms. Gigantes: I would like to suggest procedurally that we move through the votes on section 7 clause by clause.

Mr. Chairman: Okay, that is reasonable.

Mr. Ward: I want to speak on subsection 2 when we get to it.

## 1630

Mr. Chairman: All right. Does anyone want to speak on any of the subsections as we go through them or can we just vote on them? The parliamentary assistant has indicated he wants to speak on subsection 7(2), but we can go through all the other--

Mr. Barlow: Yes, I would. There are a couple there, clause 7(1)(e) particularly.

Mr. Chairman: Let us go down them then. I will start with clause 7(1)(a). All those in favour of clause 7(1)(a)? All those opposed? Carried.

All those in favour of clause 7(1)(b)? All those opposed? Carried.

All those in favour of clause 7(1)(c)? All those opposed? Carried.

All those in favour of clause 7(1)(d)? All those opposed? Carried.

All those in favour of clause 7(1)(e)?

Mr. Barlow: I would like to speak on that one. This clause refers to temporary skills shortages. I would like to know the definition of a temporary skills shortage. "Temporary" is what I want to know. What is in "temporary"?

Ms. Gigantes: I am sure it is (inaudible) implementation of Bill 154.

Mr. Chairman: That is an editorial comment.

Mr. Barlow: That is right. I want to know the parliamentary assistant's interpretation.

Mr. Ward: The clause does not refer to a temporary skills shortage. It talks about a temporary inflation in the rate of compensation because of a skills shortage. Therefore, if a circumstance arose with a highly specialized position or function—the example used was a prosthesis maker in a hospital.

Mr. Barlow: Is there a shortage of those?

Mr. Ward: Is that a good example?

Ms. Marlatt: That is the example hospitals have suggested to us.

Mr. Barlow: That is the point I want to hear.

Mr. Ward: If the rate of compensation is inflated--

Ms. Gigantes: But it goes back down because it is a temporary inflation.

Mr. Ward: That is right. It is temporary.

Ms. Gigantes: Do you use this exemption after it has gone back down or before?

Mr. Ward: What I am saying is you do not adjust. You do not make the adjustment to that high level, that blip, that may exist short-term.

Ms. Gigantes: But does the blip exist short-term? Does it go back down? Is there a temporary recession afterwards to normality?

Mr. Ward: Yes.

Ms. Gigantes: How do you prove that it has been a temporary inflation? At what point does that get tested by the commission?

Mr. Ward: I think the onus is for the employer to prove that there is a temporary inflation.

Ms. Gigantes: But definitely the commission would consider whether the wage rate of the men judged to be involved in a skills shortage and benefiting from a temporary inflation was going back down.

Mr. Ward: If somebody lodges a complaint and says that comparison between the job classes is not being made appropriately because a wage rate in the short term is higher due to a skills shortage, then the commission will have regard to that. I believe the commission can make that determination.

Ms. Gigantes: If there was a temporary skills shortage, you could present argumentation around that. You could say, "Six months from now we expect to have enough tool-and-die makers." But if you talk about a temporary inflation in compensation, you and I and everybody else in this room knows that aside from red-circling, we do not have deflation in wages very frequently. Why have you defined it as a temporary inflation in compensation?

Mr. Ward: We know the general rates of compensation for certain skills and positions that are available. That is still a known.

Ms. Gigantes: Tool-and-die makers have been in short supply in Ontario for as long as I have been aware.

Ms. Caplan: Could I add to this? Therefore, they would not be temporary. To qualify for temporary, you would have to show--

Ms. Gigantes: That they had a temporary inflation. Because the temporary inflation--

Ms. Caplan: That would not be temporary.

Mr. Barlow: Perhaps I can cite an example to the parliamentary assistant that may have been cited by some of the business groups. In Cambridge, during the recession, when we had an unemployment rate of something like 23 per cent or 25 per cent, there was a shortage of tool-and-die makers. That shortage has been there for years and it is still there. That is an inflated rate.

A small shop that employs 10 or 15 people will pay anything to get a took-and-die maker on stream. They cannot get them. That is not temporary. It is almost permanent, ongoing. If a complaint comes in under Bill 154, once it is implemented, they could be using that tool-and-die maker who is being paid much higher than anybody else in that machine shop.

There are other trades in there too, but the tool-and-die makers are the ones who are in particularly high demand right now, not only in Cambridge but also all across the province. My brother-in-law, who retired three years ago at age 65, is in big demand. He is travelling all over the province. He is in

Burlington right now working as a tool-and-die maker. How are you going to address a situation like that?

Mr. Ward: My understanding is that the exemption is on the basis of an aberration in the rate of compensation. Therefore, if tool-and-die makers are at a certain level of compensation—and there may well be a shortage of tool-and-die makers—and. as a job class, their rate is at a certain level, then that in fact is their level, but if there is an aberration in the rate of compensation of one individual within a firm as a result of a skills shortage, then that is not the level at which the job rate is compared.

Ms. Caplan: The other is not likely where you have such a highly skilled trade. When you do your comparison based on skill, effort, working conditions and responsibility, that skill would be given a very high rate.

Mr. Barlow: I am just saying that is certainly one area that is of real concern right now and I would hate to see that modified in any way other than to remove the word "temporary." I might even be inclined to have suggested that. I just want to make well known that there is a real concern in some trades, and that is one of them.

Mr. Charlton: There are two points around this question of skills shortage that I would like clarified on the record. One I would like to clarify myself and the other I would like to ask the parliamentary assistant to clarify for us.

The first is that the parliamentary assistant was asked to define for Mr. Barlow what a skills shortgage was. A skills shortage in Canada is a refusal by the Department of Employment and Immigration to grant a permit to an employer to advertise abroad for skilled labour.

Mr. Barlow: Who defines it?

Mr. Charlton: It is a politically imposed situation. It has been true for 20 years in this country.

The second thing I would like clarified is, once the shortage is over, a comparable having been established but the adjustment never having been made because of the skills shortage, will the legislation then allow a complaint that the comparison now be established and the adjustments be made?

Mr. Ward: It is a changing circumstance and it would be allowed. I think what the exemption is referring to is really the aberration in the compensation rate within that job class that exists during a time of skills shortage.

Mr. Charlton: I am asking the question in the context of going back to what my colleague raised, which is that we all know that the temporary inflation that you refer to in this section is not going to happen. Inflation is going to be permanent. The tool-and-die maker who gets more during the shortage is not going to lose money when the shortage is over. The gap is going to be even bigger than normal. Are we then going to allow a complaint to bring the comparable employee up to that inflated level?

## 1640

Ms. Herman: In the situation you raise there is no longer a skills shortage. There is perhaps an inflationary compensation that existed because

there was a skills shortage at a prior point in time. It seems to me that the ability under the bill to raise a complaint, where there has been a change in circumstances such that the circumstances that existed at the time the plan was done no longer exist, would give a person the ability to raise a complaint and say, "There is no longer a skills shortage that justifies the inflationary compensation, so therefore I think I have the ability to complain and compare myself to that job."

Mr. Barlow: I am going to bring in my friend the tool-and-die maker once again.

Mr. Chairman: Is he still with us?

Mr. Barlow: Yes, he is still with us. He is in a shop where he is paid more—he or she—that is one of the problems we are having with this whole bill. It is just as open to females as it is to male tool—and—die making and many other trades. This person is getting paid more in a shop. The fitter—welder in the shop is getting paid less. Let us say they are both males. The fitter—welder, the machinist, all these people where there is no shortage, are getting whatever their regular wage is. To accommodate the need for the tool—and—die maker, that wage is generally and traditionally inflated because they just cannot get enough people to serve that position. Where is the comparison made, the tool—and—die maker or the machinist and other people who are \$1 per hour less?

 $\underline{\text{Mr. Ward}}$ : It is the lowest comparable of equal value and I think that is a point that cannot be lost when we are talking about highly skilled positions. We still have to have due regard for them when we compare ability factors of skill, effort and responsibility.

Mr. Barlow: Fine. I think that answers my question.

Mr. Chairman: Okay. We will then call for the vote on clause 7(1)(e). All in favour? All opposed? Carried.

We will go on to subsection 7(2). Any comment on that?

Mr. Ward: There was quite a discussion with reference to subsection 7(2) and I think some difficulty in practical terms was expressed. The reason for the inclusion of subsection 7(2) was an intent not to undermine normal process of collective bargaining by means of this legislation. I can see some of the difficulties that were identified and I concede that they exist in both directions, particularly in relation to any cross comparisons that are made. But I guess the concern was that nonorganized units or whatever, by way of the coattails or whatever was achieved by the organized units, would accrue the same benefits that basically come about solely as a result of bargaining strength. The clause was put in there to recognize that.

Ms. Gigantes: That is a new one on me.

Ms. Caplan: The minister stated very clearly at the press conference that it was not the intention of this bill to interfere with the integrity of the collective-bargaining process. We recognize that the bill will have an impact but we want to respect the hard-won rights of organized labour and not have this bill interfere with that and in fact respect the integrity of that process. I think the parliamentary assistant identified it well, but if you

read the statement of the minister at the time this bill was tabled, he stated very clearly that was the intent.

Ms. Gigantes: I would like to remind members of the committee that it was not only women's groups that spoke to the issue involved in subsection 7(2); it was also organized labour. In fact, we had leaders of the labour movement representing employees in both the public and private sectors who spoke to us very strongly on this issue. They said subsection 7(2) is going to mean that once you complete the process, the whole thing is going to unravel, and you are going to be in a situation where you are going to have to do it all over again.

Let me point out one other thing. Every employer at the bargaining table makes a decision about what the total package involved is going to cost in terms of a wage increase. If he is being asked by one bargaining unit to provide a certain kind of plan or a certain amount of holiday time, he makes an accounting for that and says he can give four per cent, three per cent or five per cent as a total package. Whatever the makeup of that package, the employer accounts for it to himself. He says, "The whole thing is going to cost me this much."

The same thing can be done if we are talking about what is equal compensation when we are talking about two different groups, either both organized or one organized and one unorganized. If a group of clerks wants to have three weeks of holiday compared to two weeks for gentlemen who are organized in a union in a warehouse or vice versa, one can account for that.

Any complaint that would be raised under subsection 6(1) about unequal pay for comparable work would have to include a comparison of the total package. We are not talking about the straight pay levels; we are talking about compensation here. It does not make sense to talk just about pay levels. Benefits are something you have to look at when you are talking about comparable compensation.

That is precisely why I find it so extraordinary that, in spite of the fact that organized labour in Ontario has come and said to us extremely strongly that this is a bad clause to have in the legislation, we have the government telling us it is good for labour. Surely labour can speak for itself on this matter, and labour has spoken quite clearly.

I suggest to committee members, as legislators, that if they do not want to have to deal with this question of equal pay time and again, they should get rid of subsection 7(2) and make sure they do not have to deal with it again, at least as it will reintroduce itself under this section.

Mr. Baetz: I want to ask a question of the parliamentary assistant. When you refer to bargaining strength, do you refer to it in the formal sense of the word, of union bargaining? Is that it?

Mr. Ward: That is it.

Mr. Baetz: The formal sense of the word. Then I really think the message many of the unions and organized labour were bringing to us during all their sittings was: "Do not interfere with the bargaining process. We have our job to do and we do not want this bill messing around with it."

Ms. Gigantes: Did you hear them say they wanted subsection 7(2) removed? They said that. The Ontario Federation of Labour said it and various component unions said it.

Mr. Baetz: They were not as specific as all that, but surely this is what subsection 7(2) is saying.

Ms. Gigantes: It is a good thing you were elected to tell labour union membership what is in its best interest. I think elected labour union representatives actually have a better position from which to speak in terms of what is good for the labour movement than the rest of us have, and they said it.

Mr. Baetz: Sure, I am not arguing about that, but they consistently pointed out, even in the modus operandi of how all this is implemented: "Just be careful. Be sensitive to the bargaining process that is established. It is clearly established. Do not try to interfere with it, directly or indirectly."

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Ms. Gigantes: Would you like a copy of the draft OFL legislation, which had the concurrence as an initiative from its membership organizations, to see how they address these questions? They address them much as we have done in terms of bargaining strength under subsection 7(2). I put it to you, as a legislator, we have another reason for doing that, because the whole can of worms is just going to reappear within 10 years unless we get rid of 7(2).

Second, in terms of their very specific concerns about the way plans were designed, they wanted the ability to sit down with employers and discuss different kinds of steps to approach the achievement of equal pay for work of equal value. They said to us, "Do not hidebound us so that we have to have one gigantic job evaluation plan."

Employers said much the same thing in many instances, and we have tried to reflect that in other amendments, but that is a different matter from this matter, which is a matter of principle. The labour union movement sees it as a matter of principle, and I expect this committee to be able to see it that way, and also as a very practical problem.

Mr. Baetz: We are dealing here with a matter of principle, the principle being that if the difference is because of a weakness in the bargaining system, do not try to correct it. There are other ways, including that the unions themselves should be correcting it.

 $\underline{\text{Ms. Gigantes:}}$  The parliamentary assistant has just suggested that what  $\overline{\text{this}}$  subsection addresses is the question of formal bargaining strength, in the sense that both sides in the job comparison situation are involved in formal union negotiations. Is that what I understood from the parliamentary assistant, and that it would apply in no other context?

Mr. Ward: I merely gave the rationale behind the amendment as it was put.

Ms. Gigantes: Yes, by the minister.

Mr. Ward: Right, by the government.

Ms. Gigantes: Let us take a look at subsection 7(2). It clearly does not restrict itself only to a situation where there might be two collective agreements and where the comparable jobs might involve incumbents who are members of two different unions or members within the same unions in different locals.

It clearly addresses the situation where men are organized, for example, and women are not, and if you think that inequality of bargaining strength--

Mr. Baetz: It does not say that.

Ms. Gigantes: But it can be applied that way. It is certainly not restricted from that situation, so you would expect it to apply, would you not?

Mr. Baetz: The way it is written here, it can apply to--

Ms. Gigantes: Any situation. That is right. You asked if it meant the formal bargaining situation.

Mr. Baetz: Yes, I did.

Ms. Gigantes: You had an answer which apparently satisfied you, and I am telling you the answer was a restricted answer. You know it is, and the parliamentary assistant has just said so.

If this section is accepted in Bill 154, we will have a situation where, 10 or 15 years from now, when men in the union have once again managed to bargain themselves into doing comparable work for pay that is higher than the pay of either organized or unorganized women, women in the same union or in a different union or in no union, then women who complain will be told: "Your employer has been able to show, he can certainly demonstrate to us, that the difference in pay that has crept back into the system and puts you back very much where your mothers or your older sisters were 10 years ago is really accountable by the fact that all the men are organized in a strong union. You are in a weak union or no union. Tough. So forget about 6(1)."

Mr. Chairman: Anything else? We have had a rather substantive discussion on subsection 2. We can vote on it now if there are no further comments. That being the case, I will call then for the agreement of the committee on subsection 7(2). All in favour? Opposed? Carried.

Any comment on subsection 7(3)?

Ms. Gigantes: Very briefly, subsections 3 and 4 are related. Subsection 4 says the bill shall apply to part-time work. Subsection 3 says that if the employer can manage to call part-time workers casual on-call workers and treat them as casual on-call workers, he does not have to apply the legislation.

We are talking about an enormous percentage of the female work force in Ontario. I hope that committee members will want to get rid of subsection 3.

 $\underline{\text{Mr. Ward:}}$  We had this discussion yesterday. Clause 7(4)(c) indicates that if the work is performed on a regular and continuing basis, then the position cannot be designated in subsection 3. I think there is a clear enunciation of the difference between casual employment and part-time employment.

Mr. Chairman: Anything else? I am not trying to rush you, but I see some pensive looks and I am trying to anticipate whether you have a further comment. If not, I will call for the subsection. Shall subsection 7(3) carry? Opposed? Carried.

Shall we take subsection 7(4) in a group, or do you want to take clauses (a), (b) and (c)?

Ms. Gigantes: Take them as (a), (b) and (c), please.

Mr. Chairman: All right. That is a reasonable request. We will take clause (a). Ms. Gigantes, did you want to speak to it?

Ms. Gigantes: No. I would like just to vote on them separately.

 $\underline{\text{Mr. Chairman:}}$  I am sorry. I thought you wanted to speak to them individually.

Shall clause 7(4)(a) carry? Opposed? Carried.

Shall clause 7(4)(b) carry? Opposed? Carried.

Ms. Gigantes: I would like to move a small amendment to clause 7(4)(c). Although it is a minor change, I hope it might have a beneficial effect.

Mr. Chairman: Ms. Gigantes moves that clause 7(4)(c) be amended by changing the word "and" in the first line as it sits between "regular" and "continuing" to the word "or."

Could you elaborate on what the impact of that change would be?

Ms. Gigantes: The test that is set up in 4(c) for work that is less than one third of normal full-time work, which should not be exempted under this legislation according to 4(c), is that the work be provided on a regular and continuing basis. I am concerned about that, because I think that provides a way of getting an exemption for an employer.

What does regular mean? Does it mean every Thursday? Does it mean once a month? Does it mean that if I employ an employee on a Monday one week and three days in a row three weeks later, that is regular and continuing, or is that casual on-call work which we have exempted under subsection 7(3)?

Mr. Chairman: Perhaps we can hear from the parliamentary assistant with respect to the proposed amendment.

Mr. Ward: I would be happy to defer to legislative counsel as to what the difference would be. My concern, though, is that the amendment as put seems to me to serve as the potential to eliminate what are casual positions. The regular and continuing basis is a formalized employment arrangement that may be part-time but it is scheduled. I think that when you change the "and" to "or," you do in fact change the intent of that section.

Ms. Gigantes: That had been my hope.

Mr. Ward: That is what we anticipated was your hope.

Mr. Charlton: So we have done it right.

Mr. Ward: Okay, you did it right.

## 1700

Ms. Gigantes: I am very concerned that unless we make that change, an employer can schedule somebody on a Monday one week, a Thursday the next

week and two days the following week. That person may be a regular employee, a less than one-third full-time employee, maybe a continuing employee, but may not meet the test of "regular and continuing," if that is supposed to mean a contractual obligation between employer and employee, that the employee come in every Monday between the hours of eight and midnight.

Mr. Chairman: I will ask legislative counsel to comment on the proposed change.

Mr. Revell: I must say that in drafting them, I have never heard the concept used separately as "regular or continuing" employees. I think they are always considered to be a package. The idea is to avoid the circumstance where employment becomes interrupted from time to time and the relationship itself ceases from time to time, so you do work on a regular basis and you are a continuing employee. There are people who work a month, the relationship ends and they become new employees again. I think that is the concept that is caught by "regular and continuing" as put out in the bill.

Mr. Chairman: Further questions? We have Ms. Gigantes's amendment to clause 7(4)(c), which is the deletion of the word "and" and the insertion of the word "or."

All in favour of that amendment?

All opposed?

Motion negatived.

Mr. Chairman: Shall clause 7(4)(c) now carry? In favour? Opposed? Carried.

Where do you want to go from here? Do you want to go back to section 2?

Ms. Gigantes: If I could make a proposal, I would suggest, having gone through our discussion of timing, that we vote on sections that relate to timing. I would propose, as I did yesterday, that we look at section 9 and subsection 12(4).

Mr. Charlton: She is trying to get us massacred all in one day.

Mr. Chairman: Does section 9 give the Conservative Party any problems at this time?

Mr. Ward: There is a problem for all of us.

Mr. Baetz: I wonder what that does to a number of amendments that refer to including the public service?

Mr. Ward: That is the point. As long as we have the inability to--I guess if we are agreed that we can proceed with the Ontario public service inclusion, then we can go through this, but there are a lot of amendments because of the inclusion of the OPS.

Mr. Chairman: I thought we had an informal agreement on that.

Mr. Ward: Actually, one of our amendments in that OPS package is a deletion of section 9, I am advised, but it is rolled in elsewhere. I guess

the bottom line is that I do not think we can deal with section 9. Can we not move somewhere else until we all have a chance to digest the OPS amendment? I do not think it is workable.

Mr. Barlow: We wanted to deal with anything before section 10 separately.

Mr. Ward: Actually, we could deal more easily with section 2 because it is a straight reference in terms of the definition. When you get to section 9, you are getting into more and more specifics of the implications of the role. Why can we not start at section 2 and proceed?

Mr. Chairman: I have suggested section 2 on a number of occasions but nobody seemed to want to start at section 2. I am trying to keep it in order.

Mr. Ward: We are standing down discussion on it.

Mr. Chairman: I am quite prepared to start at section 2. We can stand down section 10 as requested by the Conservative Party. That was agreed to as well.

Ms. Gigantes: All this agreement is confusing me. I do not believe I have had my hands on the latest copy of the government motions.

Mr. Chairman: They were circulated either this morning or this afternoon.

Ms. Caplan: It is on the page where the first one says "Broader Public Sector."

Ms. Gigantes: Okay. Is it proposed that we deal with section 2 along with the government motion on section 2?

Mr. Ward: Are we going to section 2? Is that the consensus?

 $\underline{\text{Mr. Charlton:}}$  No, first, we are going to find out why we are going to section 2.

Mr. Ward: The difficulty is in section 9. We have a series of a motions that change the expression "mandatory posting date" to "proposed wage adjustment date." It makes it really difficult to deal with the section on mandatory posting dates. We can still deal with it and establish the time lines, but it is a different motion, "wage adjustment date" references instead of "mandatory posting date."

Ms. Gigantes: I did not understand the answer. Is it proposed that we deal with the new government amendments to section 2 as we are dealing with section 2 now, if we deal with 2 now?

Mr. Ward: My understanding was that we could proceed by way of debating all the clauses on the understanding that included in that debate and votes were changes as a result of the inclusion of the OPS, which would require the presence of the minister at some point in this process to put those motions formally under standing order 15 of the House. We could have our debates and our votes knowing we would have to go--the clerk points out no votes. We could have an unofficial vote, knowing full well the minister would

have come in at some point and make those motions and that we would have to vote on them formally.

Ms. Caplan: We can do it with unanimous consent.

Mr. Ward: I do not think we can. If you are prepared to let the minister make the motions in a formal way, then we will make arrangements to have the minister here to put those formally, but we did not get unanimous consent to do that earlier today or yesterday.

Ms. Gigantes: The main question in terms of the section we had hoped to deal with next had to do with when plans would have to be devised--

Mr. Ward: Understood.

Ms. Gigantes: --and also how long the implementation of those plans would carry on.

Interjections.

Ms. Gigantes: Why do we not set aside section 9?

Mr. Ward: Yes, I think it is picked up again.

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Ms. Gigantes: We could deal with subsection 12(4).

Mr. Ward: If we do it under section 12, then we are only dealing with the definition of "broader" from the definition of "public service." So section 12 will accomplish what I think you want to accomplish.

Ms. Gigantes: I did not wish to deal with all of section 12.

Mr. Ward: No, but at least the timing elements of it.

Ms. Gigantes: Subsection 12(4); is that correct?

Ms. Herman: Clause 12(2)(e) are the wage adjustment dates.

Mr. Ward: Yes, clause 12(2)(e). I really wonder whether it would not be better to start running chronologically.

Ms. Gigantes: Whose clause 12(2)(e) are we dealing with?

Mr. Ward: Ours.

Mr. Charlton: They have to move theirs.

Mr. Ward: Ours is on the table.

Mr. Charlton: It is on the table.

Ms. Gigantes: Hang on.

Mr. Ward: And moved.

Ms. Gigantes: If I am correct, what you are dealing with in clause

12(2)(e) is the adjustment days. I have made a counter-suggestion, that rather than dealing with the adjustment days, we try to deal with the framework for implementation.

Mr. Ward: What are you proposing?

Ms. Gigantes: I am proposing that we deal with our amendment to subsection 12(4).

Mr. Ward: What does your amendment to subsection 12(4) amend? Why do you not do that? If we deal with subsection 12(4), you put your amendments and then we deal with them however they are to be dealt with.

Ms. Gigantes: Page 38. So you have amendments to section 12?

Mr. Ward: I think we are making a very good case to go back to section 2 and proceed through this bill, quite frankly.

Ms. Gigantes: We have a problem with that, as you are aware, which is that we want to be able to deal with the content items that were addressed in Bill 105 before we fold the public service into this legislation.

Mr. Ward: We have that problem regardless of where we start.

Mr. Charlton: What we are saying is we cannot resolve it until we resolve the content question.

Mr. Ward: All right.

. Mr. Charlton: From our perspective.

Mr. Ward: I do not want to look at it from your perspective. Again, if you want to put your subsection 12(4) amendments, then at some point the issue is resolved.

Ms. Gigantes: Okay. Why do we not do it now?

 $\underline{\text{Mr. Ward}}$ : That does not necessarily mean we should call a motion at that point. We are okay on subsection 12(4).

On section 12:

Mr. Chairman: We move to subsection 12(4) then, page 38 in the New Democratic Party package.

 $\underline{\text{Ms. Gigantes:}}$  I guess we have to move subsection 12(4) first, do we not, and then I can move my amendment?

Mr. Chairman: Subsection 12(4) is on the table because it is in the bill. Unless it is amended, it will just carry. You now are in the process of amending it.

Ms. Gigantes: This is wonderful. I will move it.

Mr. Chairman: Ms. Gigantes moves that subsection 12(4) of the bill be struck out and the following substituted therefor:

- "(4) The compensation payable under the plan shall be,
- "(a) for the first adjustment,
- "(i) the lesser of the amount contributed to the equal pay fund on the mandatory posting date, and
  - "(ii) the amount needed to achieve equal pay; and
- "(b) for adjustments in each year following the first adjustment, the greater of,
- "(i) 20 per cent of the amount required to achieve equal pay within five years; and
  - "(ii) one per cent of the total payroll of the previous year."

Ms. Gigantes: If I can speak to the motion, it reads in a complicated fashion. My apologies, but there did not seem to be any other way to frame it.

What we are interested in achieving here is a framework in which the implementation of a plan, whatever the plan and whenever it begins to be implemented, will be completed. This is your raw plan ready to roll, as it were. We are proposing under subsection 12(4) that the first adjustment shall be a certain amount. It shall be the one per cent that employers have contributed to the equal pay fund, which is the equivalent of what is called for in the legislation, except that we would have that fund being generated as soon as the legislation is proclaimed.

We would call upon employers to set aside one per cent of total payroll. Under clause 4(a), they would not necessarily have to use that money. They would not have to use it if there were no equal pay gap to be addressed, or they might contribute less than one per cent if the equal pay gap that needed to be addressed under the plan was less than one per cent of total payroll, which could occur. If the equal pay gap that needed to be addressed was more than one per cent of payroll in the first year, they would be responsible for paying one per cent of total payroll to the equal pay adjustments.

For the subsequent years, we are proposing two notions. The first is that we would like to see the amounts paid on an annual basis so that after five years of implementation, equal pay would be achieved. In other words, the outside framework from the time of implementation of the plan would be five years. The second is that we would be calling upon employers to divide the five payments into equal amounts, i.e., 20 per cent per year. That would address the problem of making sure that, given a five-year framework, we would not have employers waiting until the final year of the five-year framework to close the equal pay gap.

Whether it was \$500 that needed to be addressed and could be wrapped up in the first year for 10 employees on a contribution of one per cent or three quarters of one per cent of total payroll or whether it was a \$5,000 wage gap that needed to be addressed over a total of six years, in the last five years we would like to see that gap addressed in equal amounts each year, or at least to the amount of one per cent of total payroll in any year where the gap would be closed, which was less than five years.

Mr. Ward: Very briefly, I did want to indicate that your subsection

12(4) deals with our subsections 12(4) and (5). We have an amendment to subsection 12(5) that I would ask you to refer to in terms of the actual dates.

Mrs. Caplan has already indicated that she wants to speak specifically to some of your amendments. Suffice it to say that the amendments you put forward do have very major financial implications, a heavy obligation on the private sector. I hope that will be recognized.

Ms. Caplan: I know that this was one of the issues we dealt with in Bill 105. There was some concern that the Ontario government, as the employer, recognized that the funds would be there. In fact, as most of the members of this committee know, if the government makes the proposal, it also makes the commitment to the funding which comes out of the consolidated revenue fund. It is not the practice to establish separate funds.

## 1720

To impose that on the private sector would be, I think, unrealistic and onerous, since, again, there is an obligation to set aside one per cent of the payroll and make sure that is distributed under this act. That is the obligation of the act. There is no necessity, as I see it, for this amendment, which just complicates it.

Mr. Barlow: I have to agree with what Mrs. Caplan just said. The impact on the employers of this province could be horrendous if there is legitimate gender discrimination but, of course--I will not say it. I was going to be provocative, but I will not.

I just feel this is something that is not at all supportable. The employment community has pretty well resigned itself to the fact that there is going to be some form of pay equity, and the less impact we can make on that community, the better it is going to be for those whom this act is trying to help. The more financial impact and implications you put on the employers in the province, the more they are going to search for better ways, different ways of getting around the act, such as mechanization, automation and so forth.

I think this would be another nail in the coffin of many of the employers in this province, so I certainly would not be in a position to support this amendment in any way, shape or form.

Mr. Stevenson: To go a little bit further, I think there probably are certain sectors in the private sector that could pass costs along relatively easily and could adapt to a shortened time period. Certainly, if this was covering the Ontario public service, which it is not at the moment but I guess will be soon, with government revenues rolling in the way they are now, that would not be seen to be a problem. It would just be a matter of five minutes' income for the government.

There are sectors out there in the private sector that are extremely competitive, where a matter of a few cents here or there in manufacturing, for example, can make a very big difference. My colleague has said it would be a tremendous burden on the employers. I think there would be situations, hopefully not too many, but there might well be situations where there would be pressure on the employees. It could very well put their own jobs at risk.

I know, socially, it would seem to be advisable to make some of these things happen relatively quickly, but it seems to me that in very tight competitive situations, when some of these companies are competing strongly

with companies in other jurisdictions, particularly with those in the United States, we have to be very careful, as legislators, when we dabble in that marketplace in a terribly aggressive and rapid way, in case we really foul things up, not only pay-wise but also job-wise.

Ms. Gigantes: I have a question about the government's amendment to subsection 12(5), which, it seems to me, creates some overlap.

Mr. Ward: It is not necessary. We are dealing with subsection 12(4), which is on the table right now. I think we will get into that explanation tomorrow. We will not even put that amendment till tomorrow.

Ms. Gigantes: Do you think they overlap?

Mr. Ward: No. What I am saying is that although your amendments overlap both, we are dealing right now with your 12(4) and our 12(4). We can vote on your amendment and we can vote on our 12(4). We will put our amendment to 12(5) tomorrow and get into that explanation. I do not think it has an impact on the discussion, quite frankly.

Mr. Chairman: All right, we will call the vote on subsection 12(4), which is Ms. Gigantes's amendment as placed before you. All those in favour of that amendment? All opposed?

Motion negatived.

Mr. Chairman: Shall subsection 12(4), as printed, now be adopted? All those in favour? Opposed? Carried.

In the light of the hour, I suggest this might be an appropriate time to break.

The committee adjourned at 5:26 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

WEDNESDAY, APRIL 1, 1987

Morning Sitting



# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC) Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward. C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Barlow, W. W. (Cambridge PC) for Mr. Rowe

Scott, Hon. I. G., Attorney General (St. David L) for Mr. Knight

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Deputy Senior Legislative Counsel (French)

Evans, C. A., Research Officer, Legislative Research Service

### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Scott, Hon. I. G., Attorney General (St. David L)

Herman, T., Counsel, Policy Development Division

### LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

## Wednesday, April 1, 1987

The committee met at 10:16 a.m. in room 151.

# PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good morning, members of the committee. I recognize a quorum, so I believe we can get under way. The parliamentary assistant wants to begin this morning by making some comments with respect to the minister's visit to our committee and the motions that he will be moving with respect to Bill 105. I will allow the parliamentary assistant an opportunity to discuss that with the committee.

Mr. Ward: To make the necessary amendments to roll in the Ontario public service in the matters that were dealt with under Bill 105, I understand that the ruling of the clerk has been that under the standing orders, the minister can only do that as a member of this committee and will have to substitute in order to place the motions. The clerk has been notified and we have circulated substitution notices for a period of time during the day.

In other words, he will be available to make those motions but currently he is in the standing committee on the Legislative Assembly. If we could get some consensus and some advance notice as to when he may appear to make those motions, it would be very helpful, not only to the government and the minister but to that other committee that requires his presence as well. I hope that at some point we can have some agreement as to when he can appear to place those motions. I wonder whether we are prepared to specify a time at this point or should we deal with it later?

Mr. Barlow: So we can prepare ourselves for the visit of the minister, exactly which motions would be proposing?

Mr. Ward: He would be proposing the package of motions that include the Ontario public service, similar to--

Mr. Barlow: He would be dealing with the one total package?

Mr. Ward: Yes, he will place those, and at that point he will return to his other committee responsibilities.

Mr. Parlow: One of them, right at the very top, of course, is a definition that we decided not to deal with. So we would deal with that?

Mr. Ward: I am suggesting, and maybe we can seek the advice of the clerk on this, that if he puts the motions, I do not believe we necessarily have to vote on them in his presence or even have the debate at that point. We

merely have to have the motions in place by a minister of the crown. Is that correct?

Clerk of the Committee: Move them and then they can be postponed and debated at any time.

Mr. Ward: We are not asking that they be debated or voted on, just put.

Mr. Barlow: All right.

Ms. Gigantes: I am quite agreeable to proceeding in that fashion today, if we wish. With the agreement of the committee, the one item that I would like to deal with first would be the remaining area of content where amendments to Bill 105, in the view of my party, were important improvements in terms of the effectiveness of that legislation.

The one remaining item is the question of who pays. It is dealt with in section 8. We have an amendment, subsection 8(1), that I believe could determine the committee's view on whether the kinds of amendments we had in Bill 105 shall be transferred to Bill 154. If this is agreeable, I suggest that the committee deal with our amendment, subsection 8(1), and then proceed to have the minister table the required motions to transfer Bill 105 into Bill 154.

Mr. Ward: Further to my request, can I make arrangements for the minister to appear here at 11:15 a.m., which will give us virtually the better part of an hour to deal with that and other issues?

Ms. Gigantes: Yes.

Mr. Ward: If it is agreed that the minister will place those motions at 11:15, perhaps we can have somebody notify the minister.

Mr. Chairman: All right. Is it still your intent to begin with section 8?

Ms. Gigantes: I would be pleased to do that.

Mr. Chairman: Is there agreement on beginning with section 8? We had completed section 7. We are not necessarily following in chronological order, if you want to begin. As the clerk well knows, the mountain of paper is increasing in height with a great deal of rapidity. With the concurrence of the committee, we will move to section 8.

# 1020

On section 8:

Mr. Chairman: Ms. Gigantes moves that subsection 8(1) of the bill be struck out and the following substituted therefor:

"(1) An employer shall not reduce or restrain the compensation payable to any employee or reduce or restrain the rate of compensation for any position in order to achieve equal pay for work of equal value."

Ms. Gigantes: We place this amendment for the same reason we placed

it in consideration of Bill 105, and it was approved by this standing committee on administration of justice.

When we look at the question of equal pay and the equal pay adjustments that we fondly hope will flow to women in this province whose work has been undervalued, we have to ask ourselves a very practical question of who pays. Whereas the green paper on pay equity outlined to us the international principle that men should not be called upon to pay for equal pay adjustments made to women, that men should not have their wages reduced, nor should women, in order to provide equal pay adjustments to other women, we have not had in either piece of legislation, Bill 105 or Bill 154, a spelling out of the fact that employees should not be called upon to pay indirectly through a loss of general annual wage increases for equal pay adjustments made to women whose work has been undervalued in the past.

Let me present the scenario that I hope will explain what I am speaking about. If, in firm X, there has been a pattern of wage increases that has more or less reflected the rate of inflation that has occurred over a five-year period--so that if the rate of inflation is four per cent, employees might be getting an increase of three per cent on an annual basis, let us say for purposes of discussion--and if, when firm X begins to implement its equal pay adjustments, the employees notice that their general annual wage increases are not now one per cent less than the rate of inflation prevalent in the economy but two per cent less than the rate of inflation prevalent in the economy, then employees in firm X have the right to say to themselves: "Why is this happening? How can it be justified?"

The employer may turn to them, and in the words of the Attorney General (Mr. Scott) who introduced Bill 154, say to them: "I am using part of the general annual wage increase that you might otherwise have expected to pay equal pay adjustments to women whose work has been undervalued in this firm. The rate of undervaluation has been determined by our equal pay plan. Until the adjustments have been made that give those women, whose work has been undervalued, a comparable pay rate for the comparable work they are doing in this firm, then all employees are going to suffer a diminution in the increases they might have expected on an annual basis."

What our amendment says is that employees who find themselves in this situation and who feel they can establish by reference to previous settlements that there has been a change in the practice of the employer in terms of the size of the annual wage increment that employees might have expected would have a right to take a case to the commission and complain that the employer was using the wages that all employees might have expected to pay for equal pay adjustments. We feel that is unfair. In our view, it is both unfair and divisive.

On the first hand, it calls upon men working in the firm to take a lowered wage increment because the employer has made a commitment now to readjust the valuation of women's work within the firm. It may not be all women. It may just be some women. It might be all women. There might be some men whose work will be upgraded because it has been determined that they were doing female work and that work has been undervalued. Nevertheless, men in the firm will be asked in a sense to pay for the equal pay adjustments. That is very divisive. It creates resentment and it is unfair to men.

It is also unfair because women will also be asked to pay for their own equal pay adjustments. Women will be among the employees who will suffer a lower rate of increase in their general annual wage increment than they would

otherwise have had in order to receive benefits called equal pay adjustments. If I am a woman working in firm X and I might have expected a four per cent wage increase in the year 1988, and if in the year 1988 the employer were responsible for providing me with an equal pay adjustment, and if the employer were taking the money for the equal pay adjustment from the four per cent increase I might have expected on an annual basis, then I am being asked by the employer to pay part of the cost of my equal pay adjustment. As a female employee, I have the employer taking money out of one of my pockets and putting it into my other pocket and somehow I am supposed to feel happier.

To me, that is not only unfair, but deceptive. It will not be easy under any circumstances for an employee or group of employees or a bargaining agent to make a complaint to the commission and have it upheld that the employer has been using the general annual wage increase portion of his payroll to fund equal pay adjustments. It would require some pretty careful documentation and some pretty strong evidence.

Such cases are rare in terms of labour law. Cases of a similar nature can be made in labour law. They are not easy to document. They are not easy to win. In other words, a complaint of this nature would not be easy to make at all, but the legislation as it exists does not permit such a complaint to be made.

In fact, we have the Attorney General's commitment to the business community that it could use funds that it normally would have allocated for general annual wage increases and redirect them to the payment of equal pay adjustments to women. Given that this does not benefit the women involved and given that it is a detriment to the men, and a very divisive element, we have argued that it should be possible for employees to lay a complaint on this basis.

It seems to us elemental fairness and it seems to us to be key to the notion of what equal pay for work of equal value is about. We do not think that employees, either male or female, should be punished because there has been discrimination in the past. They should not be punished in the future in terms of having lower general annual wage increases. It is not their fault. These decisions are management decisions in the end. We have to make sure that where there is a clear case that women and their male colleagues have been asked to pay for equal pay adjustments in future decreases in the rate of increase they might have expected on a general annual basis, a complaint can be laid before the commission.

# 1030

Mr. Baetz: In spite of that somewhat lengthy homily on this subject, I still am not certain about the fundamental difference of what you are proposing from what is in the bill. I am not arguing with your point of view, but how does your proposal fundamentally differ from and be worthy of an amendment to what is in the bill?

Ms. Gigantes: The difference is the word "restrain."

Mr. Baetz: Restrain?

Ms. Gigantes: Yes, you will find in the bill a reference to reduction.

Mr. Baetz: "Reduce the rate."

Ms. Gigantes: What we are talking about with the word "restrain" is a restraint on the increase that could be expected in a general annual wage package. What we are saying is that if normally employees would have received a three per cent increase, the inflation rate being four per cent, they should not suddenly find their increase has been restrained to two per cent on an annual basis in order that one per cent of payroll can be devoted to a different kind of payment to some of the employees, called an equal pay adjustment.

Mr. Baetz: I understand that quite clearly, but when you talk about reducing, as the bill does, not to "reduce the rate of compensation," to me that is essentially the same as--

Ms. Gigantes: No, it is not.

Mr. Baetz: In other words, there has been a pattern, as you say, of a three per cent annual inflationary rate or whatever and then suddenly after pay equity we have reduced it to two per cent. The bill says you cannot do that and I agree.

Ms. Gigantes: A reduction, I think, legally would be interpreted as, if you were receiving \$100, you now would receive \$99. A restraint would be, if you could have expected \$101, you are going to receive only \$100.

Mr. Baetz: I will bow to the parliamentary assistant.

Ms. Gigantes: What did it mean in your wage restraint legislation?

Mr. Charlton: That is why they used "restraint" in your legislation; it means a different thing from "reduce."

Mr. Baetz: "Reduce the rate."

Mr. Barlow: Before the parliamentary assistant responds, if I can make a comment or maybe ask a question, the amendment you are proposing, Ms. Gigantes, as I see it, would take away any bargaining the company would have. Let us say a company has been assessed an adjustment package under Bill 154. However, in that particular year the company feels that for economic reasons, it cannot pay any increase whatsoever; not because of implementation of Bill 154 but because there is just no money there for an increase. I am talking really more of an unorganized company than an organized company where the bargaining would go on. The bargaining would go on anyway. It could be in either case. You are putting the onus on the enforcement body then to say, "You are going to pay an increase to all the other people in the organization anyway."

Ms. Gigantes: No.

Mr. Barlow: You are in effect putting the onus on the government to set wages and I think that is wrong.

Ms. Gigantes: There would be an onus under this legislation for a hearing to be held. Obviously, the employer would lay out the situation in the employer's terms. That is a fairly normal kind of process to go through. What you do is, somebody says, "We always had a three per cent wage increase; now we are going to get a two per cent wage increase," and lays a complaint under

Bill 154. Then the employer responds. When that complaint is heard, the employer says, "This year we were not able to find any wages to increase anywhere, period."

Mr. Barlow: Now if that happens and an employer says that to the employees, the employees may not be happy with it, but that is it. There just is no money in the pot. Now the company and the employees have to go before a hearing, tribunal, board, commission or somebody to--

Mr. Charlton: Let us clarify that. That is already true.

Mr. Barlow: No, it is not.

Mr. Charlton: Sure it is. What usually happens when the company puts nothing on the table--

Interjection.

Mr. Chairman: One speaker at a time. We will give Mr. Charlton the floor.

Mr. Charlton: What usually happens when the company puts nothing on the table is that the union lays a charge under the Labour Relations Act of bargaining in bad faith and there is a hearing. That already happens.

Mr. Barlow: If it is an organized company, but--

Mr. Charlton: This is just putting an onus in terms of restraint as a result of pay equity.

Mr. Barlow: These guys always think in terms of organized labour. Every company, as we know, has not organized, and the unorganized companies sit down now with their employees and work on a deal. "This year we can afford X number of dollars or percentage increase," or "We cannot." Now if they say: "We cannot afford any increase whatsoever. We have been told and we are prepared to an increase for the female work force to accommodate for pay equity, but we cannot pay anybody any other increase whatsoever," you are saying they are going to be dragged before the enforcement body, whichever that might be, to justify whether they should pay an increase. It is wrong.

Mr. Charlton: What you are saying is you do not want any clarification of that so employers can in fact use that as-

Mr. Barlow: You are assuming that they will.

Mr. Charlton: But you do not want anybody to look at it.

Mr. Barlow: No, I am sorry. It suffices to say that I am not prepared to support the amendment.

Mr. Chairman: Would the effective impact of this amendment be to allow virtually every worker in Ontario to complain to the tribunal, commission, whatever it might be, with respect to their wage increases?

Ms. Gigantes: There is a section in the bill that deals with vexatious, frivolous, irrelevant, trivial complaints.

Mr. Chairman: It really does not balance off a penalty in the same respect that perhaps some of us think it should.

Ms. Gigantes: A review officer would take a look at it, first of all.

Mr. Charlton: It would never get to a hearing if it did not have some substance.

Mr. Chairman: That part about vexatious or frivolous complaints is there with the intent of perhaps minimizing that kind of unnecessary work load. For my own information, does this amendment not effectively open up the possibility of a complaint for every worker in Ontario, organized, unorganized, male, female?

Ms. Gigantes: The possibility of a complaint for every worker in Ontario exists under the bill now. Whether we put in a section that has to do with wage restraint is another question.

Mr. Ward: You are correct that the availability for a complaint exists for every worker in Ontario on the basis of pay equity wage adjustments, but the point I believe the chairman is trying to make is that it allows, through the complaint process, every worker of Ontario to file a complaint with regard to the amount of their wage settlement, irrespective of the issue of wage adjustments between female and male job classes. That is exactly what this does.

Mr. Charlton: That is right, and as we have just said, and as we have under the Human Rights Code, and as we have under employment standards and all the rest of the labour legislation in this province, there is a screening mechanism and if there is no substantive complaint, it does not proceed.

Mr. Ward: I understand that. Every worker in Ontario, or every bargaining unit, if he has a difficulty, has a recourse to a hearing officer under other labour legislation. Now, in addition, he is going to have another recourse under this legislation. What I want to clarify is the intent to entrench the patterns of wage distribution. Is that the intent of the amendment?

Ms. Gigantes: No, it is not. The intent is to make sure that women do not pay for their own equal pay payments and that their male colleagues do not have to sit around feeling, for a period of up to 17 years, that the reason they did not get the increases they might have expected is those blankety-blank women are getting equal pay.

Mr. Ward: But the effect is to entrench the patterns of wage distribution, whether they have been appropriate or not in the past. I am saying that is the effect.

 $\underline{\text{Ms. Gigantes}}$ : That is simply not the case. To take a case forward under this--and you will, if you are being frank, assess it the same way I do--the chances of being able to prove a case of wage restraint are pretty minimal.

Mr. Charlton: We might even suggest to the chair that the committee consider spending the money to send the parliamentary assistant to labour college so he can learn a little bit about collective bargaining.

Ms. Gigantes: We are not only speaking about areas where there is collective bargaining.

Mr. Ward: I never feel compelled to learn anything from you, Brian.

Ms. Gigantes: Under our human rights legislation, for example, every citizen of Ontario can find 50 reasons to lay a complaint every day of every year. Lots of people file complaints every day of every year.

Mr. Ward: What is the backlog under human rights at the moment?

Ms. Gigantes: The number of hearings that are held after the review officers or the inquiry officers have a look at a case are minimal compared to the number of complaints filed. There is a screening process and the review officer—in this case the inquiry officer—in the human rights case sits with the complainant and explains the chances for proving the case. The chances of proving a case of wage restraint are pretty minimal.

It is to provide a minimum kind of guarantee against the unfairness we are talking about, where women have to pay for their own equal pay adjustments. Why would I want to have equal pay legislation in this province if I am going to have to pay for it out of my own pocket? What woman would be interested in that?

### 1040

Mr. Chairman: I do not not think anyone is suggesting that is the intent.

Ms. Gigantes: In fact, the Attorney General said to business groups that is precisely how they could pay for it. If that is what we are doing here, I say to you, "Forget it."

Mr. Baetz: I think you are making a mountain out of a molehill because the spirit of this legislation, and it manifests itself through a number of the clauses, is that you do not impose penalties on the rest of the employees to correct imbalances based on gender. That is basic to the bill and I have no argument with that. I ask the parliamentary assistant to help me understand a little better. Why in your wisdom, the wisdom of your legal counsel and of all your ministry people and so forth, did you choose to say "reduce the rate" instead of "restrain the rate"?

Mr. Ward: The intent of the clause was that wages could not be taken away-let us face it-from those in the male job classes and have male wages reduced to achieve pay equity.

Mr. Baetz: Right.

Mr. Ward: That is clearly and simply the intent. The argument that is being made here strikes me as being similar to many of the arguments we have heard from groups and organizations that say they should be exempted from any impact of this legislation. The fact is that nobody wants to bear the cost in some way or other and the fact is that everybody has a role to play in bearing some of the cost.

Ms. Gigantes: Even the women who are supposedly getting benefits under this legislation are going to end up paying for it. You go tell that to

the voters in Ottawa West, Mr. Baetz, and they will love you. Can we have a vote on this? I think we have had sufficient discussion.

The Acting Chairman (Mr. Barlow): Yes, if we are ready for a vote. I think we have had a pretty good discussion on it.

Those in favour of the amendment? Opposed?

Motion negatived.

Ms. Caplan: There is a government amendment to add a subsection 3. If you want to deal with it at this time, we can, and we can deal with the whole clause. Or are we going to come back to it?

The Acting Chairman: Perhaps we should carry subsection 1. Shall subsection 8(1) carry? Agreed.

Ms. Caplan: Shall we leave the rest of that and come back to it sequentially or do you want to deal with all of section 8 now?

The Acting Chairman: Yes.

Ms. Caplan: I move clauses 8(2)(a), (b) and (c).

Mr. Chairman: Is there any discussion on clauses 8(2)(a), (b) and (c)? Shall they carry? Carried.

Ms. Caplan moves that section 8 of the bill be amended by adding thereto the following subsection:

- "(3) Where, to achieve pay equity, it is necessary to increase the rate of compensation for a job class, all positions in the job class shall receive the same adjustment in dollar terms."
- Ms. Caplan: As an explanation, this deals with the reality of what is out there; that is, within a job class there is a range and there are different people placed within the class within the ranges. This will allow that to happen and respond to the reality that not everybody is at the same place in the range within a class. That is all this does and it is quite technical.
- Ms. Gigantes: I want to ask a couple of questions because we will be introducing amendments that I hope will complement this amendment. I would like to lay out a work scenario and ask what the government conceives to be the result of this amendment. My general impression of the amendment is that it is a good one and I would like to know how it would work in a case with which I am familiar.

In a university, there is a class of clerical jobs where there are seven levels of jobs within that class and where it is found that a comparison can and should be made with, say, lab technicians and where within the lab technician group there are three levels. Further, in the clerk group, most of the clerical workers are in levels 2 and 3. At levels 6 and 7, there is one occupant at level 6.

My understanding, further to other amendments that will be coming, is that we are going to compare the top male technical rate with the level of the female class, namely, clerk 2, that has the most occupants. We are going to

decide on an absolute amount of money after having made that comparison, so we are comparing the clerk 2 to the technician 3 and we decide that there has to be an increase of \$10 a week. We are going to take the \$10 and apply it to the clerk 7 who does not exist, to the clerk 6 who exists, and the clerks 5, 4, 3, 2 and 1. Is that correct?

Ms. Marlatt: What this amendment does is you have had to increase the job rate of the clerk 2 by \$10 per week to connect with or to be equal to the lab technician 3. But if the job rate for the clerk 2 varied from \$5 to \$10 a week--say that is the range of salary--if you have had to take the \$10 at the top and add \$10 to it to make it \$20, you also have to add \$10 to the bottom so that--

Ms. Gigantes: That is within the clerk 2 level.

Ms. Marlatt: Within the clerk 2 level, it takes all of the salary rates, and if you had to increase the comparable rate by \$10 per week, you have to increase each of the ones in the others.

Ms. Gigantes: So the job class here is a job level; it is not a group of jobs as in another amendment, subsections 5(6) to 5(8), or whatever the number is.

Ms. Marlatt: This does not have anything to do with the series of job classes. This amendment has to do with the rate of pay.

Ms. Gigantes: If we apply, for example, the amendment which we have not dealt with yet--I would ask your indulgence to look at the government motion that affects subsections 5(6) to 5(10) inclusive. Suppose the employer in this situation by agreement, by order or whatever, had decided that the clerical group as a whole was a job class, how does section 8 apply?

 $\underline{\text{Ms. Marlatt:}}$  That explains what happens within the clerk 2 level and what happens to each salary range there.

Ms. Gigantes: I have always thought of the clerk 2 level as a level.

Ms. Marlatt: There could be a dozen clerk 2s, each earning a different salary and this makes sure that each of the clerk 2 salaries moves in unison.

Ms. Gigantes: Okay, then we will superimpose the situation that I thought was that level.

# 1050

Ms. Marlatt: With that series, you are moving a whole series and I think you would move them also in unison. If you said there was relativity between the clerk series 1 through 7 and you moved the job rate for the series 2 by \$10, then you would be moving each job rate by \$10, within and up and down the series.

<u>Ms. Gigantes</u>: I have a concern about this because we have been told by employers and employees that very often within a job class, as defined under subsections 5(6) to 5(10), we have seven levels of clerks. If we have seven levels of clerks, the top few levels, maybe levels 5, 6 and 7, would be called merit levels. In fact, on a seniority basis, you are going to get up to

clerk 4, and after that if you are somebody's pet, you become a clerk 6. Apparently, that is how it operates and let us all be frank about it.

Why is it the clerk 6 should get the \$10 increase when the clerk 6 job has not been compared? It seems to me we are getting into a situation here where we sound like we are doing something very progressive under section 8, but it concerns me when we talk about it in conjunction with the government motion for subsections 5(6) to 5(10). I do not see the reason for it when we apply it in conjunction with that. Before we vote on this, could we get a little more background on how it would work?

Mr. Ward: If you want to stand it down, that is one thing, but I really think the issue you identify is a good one and one I am sure we are going to explore through the course of the day. In terms of the amendment in section 8, we all generally concede that it is a good one. I think the issues you are raising relate to subsection 5(6). I know what you are saying. You are now asking us to deal with an issue in subsections 5(6) to 5(10), whereas I have always understood that the amendment under section 8 is dealing with it as two lines, clerks 1, 2, 3, 4, 5, 6, 7, and then the levels 1, 2, 3, 4. We are dealing with the horizontal lines.

Ms. Gigantes: I think you are right and Mr. Charlton agrees. If we find, having dealt with subsections 5(6) to 5(10), that it means something else once we have gone through it again, we can always decide we need to come back to it.

Motion agreed to.

The Acting Chairman: Shall section 8, as amended, carry?

Ms. Gigantes: We have other amendments to section 8. You will find them on page 26. They are numbered right now so as to provide additions to section 8 of the bill beginning with the numbering 8(3). As we have just passed a new subsection 8(3), I would like to deal with it the way it is and assume we can renumber the amendments as we propose them here.

Mr. Ward: Why do we not deal with the substantive matters within them? We can always resolve the numbering issue.

Ms. Gigantes: That is great.

The Acting Chairman: Should these amendments pass, they can be properly numbered.

Ms. Gigantes: I will read the amendment first and I am going to have to amend the amendment as we go, as we have just refused to place the question of restraint into the legislation as something that can be complained about to the commission.

Mr. Ward: We have dealt with this.

Ms. Gigantes: Do you have a problem?

Mr. Ward: We dealt with this issue with your amendment when we carried subsection 8(2).

Ms. Gigantes: No, this is a different kind of amendment. I will read

it in amended form. You will see that I have removed the references to "or restraint."

Mr. Chairman: Ms. Gigantes moves that section 8 of the bill be amended by adding thereto the following subsections:

- "(3) A complaint of a reduction of compensation shall be referred to the commission and, if the complaint is upheld by the commission, the employer shall adjust the compensation of the employees affected at the rate at which they would have been entitled but for the reduction and shall pay compensation equal to the amount lost because of the reduction.
  - "(4) No employer or person acting on behalf of an employer shall,
  - "(a) dismiss or threaten to dismiss an employee;
- "(b) discipline or suspend or threaten to discipline or suspend an employee; or
  - "(c) intimidate, coerce or penalize an employee,

"because the employee has acted in compliance with this act, the regulations or an order made under this act or has sought or may seek the enforcement of this act, the regulations or an order under this act.

- "(5) The burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (4) lies upon the employer or the person acting on behalf of the employer.
- "(6) Where the commission is satisfied that subsection (4) has been contravened, it may make such order as it considers appropriate, including an order that.
  - "(a) the employee be reinstated with the employer;
- "(b) the compensation of the employee be restored to the same level as before the contravention; and
- "(c) the employer pay to the employee the amount of all compensation lost because of the contravention.
- "(7) The order under subsection (6) may require that all costs of the proceeding before the commission be borne by the employer."

Ms. Gigantes: If I could make a suggestion in speaking to this amendment, I think we can deal with subsection 3 as one item and subsections 4, 5, 6 and 7 as a somewhat different kind of item, and I will speak to them in that way.

Subsection 3 simply deals with the question of what happens if a complaint under subsection 8(1) is upheld, and it says what the employer shall be required to do if it is proved in a hearing that the employer has reduced the wages of employees in order to comply with this bill, or for a reason that the employer associates with compliance with this bill.

Subsections 4, 5, 6 and 7 are really statements in the language of the Employment Standards Act about the requirements for compliance by the employer and the requirements that may be placed upon the employer if he or she

contravenes the act by threatening an employee, to put it in simple terms. We have used the wording of the Employment Standards Act.

The legislation before us has a similar kind of clause in subsection 2, but we have chosen to reproduce the language that already exists in labour legislation for two reasons. One is that employers will be more familiar with it. Two is that where there is a bargaining agent and where there has been a pattern of relationship between the employer and a bargaining agent, and both parties are familiar with the Employment Standards Act, it is the simple duplication of language which already exists in the labour legislation of Ontario, and we feel it may be easier to uphold because of that.

It also takes into account that somebody may get dismissed for trying to exercise rights under this legislation. Certainly that has happened in employment standards cases, and we all know it has happened. We think we should recognize that possibility in this legislation and spell it out in exactly the same way as we do in existing labour legislation.

# 1100

Mr. Ward: In regard to the wording in some parts of this proposed amendment, I do not believe it is a case that there is necessarily any difference of opinion in terms of the intent or the impact of the wording that is contained within here. I feel very strongly that some of it is redundant. However, in terms of adding the protection from reprisal in the existing subsection 2, it would require opening it up and adding that. I would prefer to have some comments from legislative counsel. I will say that on subsections 5 and 7 we have some real concerns.

Ms. Gigantes: Could you outline those concerns?

Mr. Ward: Frankly, I do not --

The Acting Chairman: We are going to deal with subsection 3 first and then we can deal with the others. Mr. Revell, you have a comment to make to help us out here.

Mr. Revell: I think that in the light of the complaint-based system that exists in part IV of the act, subsection 3 is not necessary. The first thing that would happen at law is that an employee who is affected by a reduction in wages would be entitled to complain under section 20, because it would be a contravention of the act. Then a review officer would investigate and attempt to effect a settlement. If that did not work, then there would be a referral for a hearing. Subsection 3 is covered the way part IV of the bill now works.

Ms. Gigantes: Section 20. If counsel has any other comments, I would be delighted to hear them.

Mr. Revell: I am sorry. I did make a mistake there. It is part IV, but it is section 21.

Ms. Gigantes: I believe counsel will agree with me that our subsection 3 is not designed principally to provide a complaint mechanism, but to say what the redress for that complaint of reduction of compensation shall be and to make it clear.

For example, let me tell you about a case I know of under the employment

standards branch. A woman complained that she was not getting equal pay for work of equal value. In effect, when she called the Ministry of Labour, she was told to talk to her employer. She talked to her employer, and he said, "Stuff it." She talked to other female employees who discovered they also were not getting equal pay for equal work under existing legislation. They went together to talk to the employer. He fired her, and when she went back to the ministry, she was told it was in the process of investigating her equal pay complaint. That was upheld—it has been appealed by the employer in the meantime—but she has been dismissed.

When she is dismissed, there is nothing apparently in the legislation that requires the Ministry of Labour to undertake an action on her behalf that questions whether her dismissal was related to the fact that she was trying to exercise her rights. The back pay she got as a result of her complaint, which was upheld and which is now being appealed, did not bear interest.

There does not seem to be anything about the way that legislation is framed or carried through that would guarantee what the outcome is going to be. It could be that the commission, looking at a case where there has been a reduction of wages, would simply say, "Now you can start paying at the old level." What this clause says is, "You have to pay back."

Mr. Revell: Starting at the word "if" in the third line, I can see that it is putting in a mechanism for enforcement. In fact, I think the problem I am having is really in the first three lines with, "A complaint of a reduction...shall be referred." It seems to be setting up a mechanism that is separate and apart from the normal complaint mechanism in part IV of the bill. I am wondering, if the motion with respect to subsection 3 were withdrawn at this time, if we could have a chance to meet and discuss this. I think it would still be in order to discuss it under part IV of the bill, exactly the same provision, because it does go to the enforcement mechanisms under the act.

Ms. Gigantes: Could we have a moment?

The Acting Chairman: Yes.

Ms. Gigantes: That sounds good. Now if it were suggested also that we treat the following subsections in the same way?

The Acting Chairman: You can answer that, counsel, and then I am going to suggest that if we want to organize our thoughts, we could call a break. We are due for a break about now. The minister is due to arrive in about five minutes.

Ms. Gigantes: I think counsel's suggestion is a good one.

The Acting Chairman: We will break for five minutes and come back.

The committee recessed at 11:07 a.m.

### 1127

Mr. Chairman: Members of the committee, I recognize a quorum. I would like to get under way with the additional amendments we are now going to deal with. I would like to welcome the Attorney General to our committee's deliberations. Of course, this is the legislation that he is proposing through

the able efforts, at the moment, of his parliamentary assistant who, I might say, has done a commendable job, sir, in your absence.

Hon. Mr. Scott: He has been conciliatory, I understand.

Mr. Chairman: Yes, he has. He has been most conciliatory in all his work to this point--

Mr. Charlton: Speak for yourself.

Mr. Chairman: --with a few exceptions that some members of the committee may wish to address. We do welcome you, sir. I believe you have some opening comments with respect to the amendments you wish to propose.

Hon. Mr. Scott: Thank you, Mr. Chairman. I have here eight amendments. I think copies have been given to members of the committee and to you. These amendments, in my opinion, direct the allocation of public funds and expand, in that connection, the parameters of the bill that is before the committee.

With that in mind, before this bill goes to third reading, a message will be delivered to the House by His Honour the Lieutenant Governor recommending these precise changes. With your concurrence, I would like to propose them now.

Mr. Chairman: It is the view of the chairman, with respect to the position being put forward by the Attorney General, that a minister of the crown does, in fact, have the authority accompanied by the message from His Honour the Lieutenant Governor to expand both the scope of the bill or any money-related matters, since it is the government's prerogative to do so. I will rule, therefore, that the amendments are admissible. I do so in full recognition of the fact that I ruled differently with respect to the expansion of the scope of a companion bill on an earlier date, where the scope of that bill was being expanded by those who were not members of the cabinet or of the government. I see this as an entirely different matter, and therefore I rule the amendments in order.

Having said that, if there is any disagreement on the part of the committee on the process that we follow here, as always, you have the opportunity to challenge the ruling of the chair. If you wish to do that, you may do so now. I see some heads waving in a negative fashion. If there is no challenge to the chair, then I will ask the Attorney General to proceed.

### 1130

Hon. Mr. Scott: Do you want me to read the eight of them in succession, do you want to deal with them one by one, or how do you propose?

Mr. Chairman: There would probably be some value, I think, in dealing with the eight of them in succession followed by some comments from you since they are companion amendments in some instances and probably could be discussed in a package. Unless there is some specific reason why you want to do them individually.

Hon. Mr. Scott: No, there is not, unless Mr. Ward has any.

Mr. Ward: I thought it was clearly understood that rather than get into actual debate on the substance of the motions that could be stood down

until such time as we were actually prepared to vote on them. I do not think we want to leave the door open and keep the minister here away from his other committee.

Mr. Chairman: I appreciate the minister's limited time. I gave the opportunity to the minister to make some comments on the amendments since he may not be here at a later time when we debate them in more detail. However, if the minister can give us some of his time now, why do we not take advantage of that with respect to the amendments that are being proposed. I will leave that up to you.

Hon. Mr. Scott: May I then simply move them, one following the other, or seriatim as we call it in the other committee. At the end, we can make a remark or two about them and respond in any way the committee may propose.

Mr. Chairman: Hon. Mr. Scott moves that subsection 1(1) of the bill be amended by striking out the definition of "broader public sector."

Hon. Mr. Scott moves that subsection l(1) of the bill be amended by striking out the definition of "employer."

Hon. Mr. Scott moves that subsection 2(1) of the bill be struck out and the following substituted therefor:

"(1) This act applies to all employers in the private sector in Ontario who employ 10 or more employees, all employers in the public sector, the employees of employers to whom this act applies and to their bargaining agents, if any."

Hon. Mr. Scott moves that section 10 of the bill be struck out and the following be substituted therefor:

- "10(1) This part applies to all employers in the public sector, all employers in the private sector who, on the effective date, employ 100 or more employees, and those employers in the private sector who post a notice under section 19.
- "(2) This part does not apply to an employer who does not have employees on the effective date."

Hon. Mr. Scott moves that subclause 12(2)(e)(i) of the bill be amended by striking out "broader" in the second line.

Hon. Mr. Scott moves that the preamble to the bill be amended by striking out "in the broader public sector and in the private sector" in the third and fourth lines.

Hon. Mr. Scott moves that the long title to the bill be struck out and the following substituted therefor, "An Act to provide for Pay Equity."

Hon. Mr. Scott: That is a case where the long title is made shorter.

Mr. Chairman: Hon. Mr. Scott moves that section 37 of the bill be amended by striking out "1987" in the third line and inserting in lieu thereof "1988."

Hon. Mr. Scott: I think it will be reasonably apparent to all

members who are familiar with these issues what is intended to be accomplished by this series of amendments. I do not have to take the committee through the history of Bill 105 and Bill 154, and the amendments that have been made with respect to Bill 105. I simply say that what we propose, and I hope it will achieve the concurrence of the committee, is that this act should extend to the public sector, that is, the Ontario public service and what is traditionally called the broader public sector, as well as the private sector.

Mr. Chairman: We may have time for some questions of the Attorney General while he is here but I caution members of the committee that there was an agreement that we not actually get into debate on the various amendments at this time. They are simply being tabled with us and moved this morning by the Attorney General and will be debated at a later date. If there are questions from members, we can proceed with those now.

There are no questions, I believe.

Hon. Mr. Scott: Thank you. If I may be excused then, Mr. Chairman.

Ms. Caplan: Are we ready for the vote?

Mr. Chairman: I do not know that it will move quite that quickly. Thank you for your time.

We will have Ms. Gigantes then and her amendments. I believe subsections 1 and 2 and the new subsection 3 of section 8 were carried while I was absent for a few moments. Ms. Gigantes is now in the process of perhaps changing a portion of her amendment on section 8. Maybe you would like to speak to whatever alterations you have in mind with respect to your amendment.

Ms. Gigantes: With the indulgence of the committee, I would like to stand down the proposed amendments which are currently associated with section 8 because I think that, following advice from legislative counsel and some further rearrangement of these sections, we can come up with an amendment which will be easier for the committee to consider and also to approve.

 $\underline{\text{Mr. Chairman}}$ : Is there agreement by the committee that they be stood down? Fine.

Mr. Chairman: I would like to get back to the beginning if we could. Do you want to move to subsection 2(1)?

Ms. Gigantes: Okay.

Mr. Chairman: Again with the agreement of the committee, we will go back to subsection 2(1).

Ms. Gigantes: Before we agree to that, I would like to take a look at what that is going to mean.

Mr. Ward: It means starting at the beginning, which is rather a bizarre concept.

Mr. Barlow: That is a novel idea.

Mr. Chairman: It is something this committee has never tried before. I am sure you will find--

Mr. Charlton: That is why we are having so much difficulty with it. It is a precedent.

Mr. Chairman: An entirely new one.

Ms. Gigantes: If I remember correctly, there had been a request from the Conservative members of this committee that the issue of whether coverage was provided in this legislation for employees who worked in places of employment with fewer than 10 employees was one that they wished to defer until Monday. They may have changed their minds on that, but I recollect their having requested that and received that concurrence.

Mr. Barlow: We were just discussing that, but we can deal with everything except clause 2(1)(b), which refers to that.

Ms. Gigantes: No, because the government has an amendment to subsection 2(1) which also implies that there will be no coverage for places of employment with fewer than 10 employees.

Mr. Barlow: That is right.

Mr. Ward: I hate to raise another issue, but there are a number of agency amendments tabled, ours, which refer to separating some of the functions within the commission. There is a repeated reference throughout the legislation to the commission. Our amendments will say "hearings tribunal" or "commission," whichever the case may be. There might be some difficulty if we do not deal with that first. Then we will have to stand all those down.

The Conservatives have amendments on agency as well, which are substantially different from ours. I hate to say it, but we may be better served if we went to agency and then went through the bill.

### 1140

Ms. Gigantes: I agree with that. It seems to me that what we have before us now are two proposals to change the construct of the bill: one, the Conservative suggestion that instead of having an Equal Pay Commission, we should have the administration and implementation of this legislation carried out through the employment standards branch of the Ministry of Labour; two, a proposed government change which would retain the Equal Pay Commission but divide it into two different functions. One would be the monitoring and mediating function and the other would be the hearing function.

We are going to have to discuss these matters in any case, and they do affect a number of other items in the bill and other amendments. Perhaps if we began our discussion on those two proposals and got that well thrashed out, we would be--

Mr. Ward: I suggest that we start with section 26, which contains the agency references in the bill. Then we can deal with the Conservative amendments regardless of how they are numbered, the references to 26, and deal with ours--

Ms. Gigantes: Can I suggest that if the committee is agreeable, I would prefer not to vote today on the government amendments to create two different operations within the Equal Pay Commission. The reason for that is that it does change the nature of many other parts of the bill, including the role of the review officer and the question of what complaints shall be heard

under this legislation and whether the complaints shall be restricted complaints or full complaints.

We have amendments that address both those matters, and I would prefer to be able to hear the government rationale for its amendments, hear the Conservative Party rationale for its proposed amendments, and vote on them at a later date. Many of the issues that are interrelated within those discussions create other amendments or the possibility of other amendments, and I would like to be able to consult with people who have followed this discussion very intensely over a period of weeks and months and who have more understanding of many of these areas than I do.

Mr. Ward: With respect, I really do not think the changes that are proposed even approach the magnitude that your remarks would lead one to conclude. Why do we not move to section 26 before you prejudge whether they should be dealt with? Let us get some--

Ms. Gigantes: I am very happy to discuss those proposals.

Mr. Ward: If we stand down the vote, the fact is that we cannot move through the bill without standing down virtually every section because of references to the commission or to the hearings tribunal or whatever. It makes it that difficult. If you want to make the argument that you are not prepared to vote once we have got into the discussion, all I am asking is that you make that argument then.

Ms. Gigantes: That is fine. I am quite prepared to do that.

Mr. Chairman: I was speaking to the clerk and I did not catch the last part of your comment.

Ms. Gigantes: We are just going to let things flow.

Mr. Chairman: Are you going to go to section 26?

Ms. Gigantes: We will go to section 26. There is no agreement to vote on the matters involved in section 26 yet.

Mr. Barlow: I wonder if the parliamentary assistant can give us an overall view of what his amendments flow from. Do not get into specific sections; just give us an overall view of where you are going.

Mr. Ward: Basically, the amendments in section 26 separate the staff function of the Pay Equity Office from the hearings function. I do not think it could be any clearer or more succinct than that.

Mr. Barlow: So there will be two offices?

Mr. Ward: Yes, the commission will consist of the Pay Equity
Hearings Tribunal, whose function will be to conduct the hearings as is the
case now in many other agencies, and the Pay Equity Office, which is there for
the ongoing conduct of the commission's work. Section 26 really does not go
beyond that.

Ms. Gigantes: I do not want to make an argument for him, but it seems to me that what is being proposed is that the commission would have a tribunal section which is separate and apart and is only for the purpose of hearings. The commissioner would have responsibility for both the tribunal

section and for what is called the Pay Equity Office, which is the administrative section and the implementation and mediation section of the work to be carried out under this bill. The reporting would be through the commissioner to the minister. The reporting would not be from the tribunal to the minister, which is the way the bill is structured now.

Mr. Ward: With respect, your interpretation again goes a little beyond either the intent or the actual substance of the motion. What we are doing is separating the mediation function from the hearings function.

Ms. Gigantes: There is more than a mediation function that goes on through the Pay Equity Office as you propose it. There is also an order-issuing function on the part of review officers.

Ms. Marlatt: What we are trying to do is not have the review officers report to the commissioners. Then if a review officer issues an order, there is a hearings tribunal that is separate and apart from the review officers, and you do not feel you are making your case to the same person twice. We are separating that so that you have a second order hearing. The review officers will no longer be working directly for the commissioners, and you have that separation.

There is another function of the Pay Equity Office, and that is the public education aspect.

Ms. Gigantes: Yes. Now, could I get the language straight here? Will the person who will be the head of the commission be called the commissioner?

Ms. Marlatt: Yes.

Ms. Gigantes: The members of the tribunal will not then be called commissioners.

Ms. Marlatt: On the hearings tribunal there will be members of the commission. There will be a presiding officer in the commission and one or more deputy presiding officers, and then there may be other people designated on the commission and there would be an administrative person to oversee the work of the public education and the review officers.

Ms. Gigantes: I am lost; forgive me. Could you deal with the question of the role of members of the hearings tribunal and what those people would be called, although I do not think it makes a lot of difference, and could you also separate out the director of this act, as it were, who will be the equal pay commissioner as I understand it under these amendments?

Mr. Barlow: Who is the top guy or top person on the totem pole?

Ms. Gigantes: More than that. I think we have got to get our language clear here from the start or we are going to be in total confusion.

Mr. Chairman: Perhaps legislative counsel could offer some overview of what we are doing here. It would be enlightening to the committee if you would so proceed.

Mr. Revell: The motions as drafted set out no terminology per se in terms of specific upper case titles for people, other than the presiding officer and the deputy presiding officers. People who would be serving on the hearings tribunal are called members in the legislation, and it is purely a generic word.

Ms. Gigantes: You could call them tribuners.

Mr. Revell: Or whatever; yes, exactly. With respect to the administrative side of the office, the Pay Equity Office, the Lieutenant Governor in Council would appoint, independently from the appointments to the hearings tribunal, one person who would be generically called the chief administrative officer. The way it is constructed, I think it would be available to the government in making appointments to give this person a title other than chief administrative officer.

Chief administrative officer is going to be the function and designation but these titles are generic. We have not put upper case C, upper case A or upper case O on it. I think it is safe to say we have people who are called hearings officers and then there is the chief administrative officer. If you are to use that kind of terminology to distinguish between the members of the hearings tribunal and the people who will be on the administrative side, you might find that facilitates it. Deliberately, no titles have been put on them.

## 1150

Ms. Gigantes: Could you give us an example of what would be the closest parallel in terms of existing legislation to the model being composed?

Mr. Revell: I cannot think of an exact parallel to this.

Mr. Barlow: To whom would these people, the pay equity officer and the tribunal people, report? Is the minister at the top or is there somebody under the minister?

Mr. Chairman: The ultimate authority.

Mr. Barlow: Who has the final say or who is the top person?

Ms. Marlatt: There are two. There is one person who is the chief presiding officer of the hearings tribunal and there is the chief administrative officer, the executive director, if you will, of the administrative side.

Mr. Barlow: As a quick follow-up, to whom do those two people report? Who is above them? There has to be someone.

Ms. Marlatt: The minister responsible for the act.

Ms. Caplan: One function is clearly administrative whereas the other function involves hearings and is quasi-judicial. That is the split.

Mr. Baetz: In view of the fact this is all still very, very vague, except for one or two titles, and not even that, when and how will you be fleshing out this thing or developing it? Is it going to be through order in council? It is going to be through regulations of the legislation? Where, when and how?

Ms. Gigantes: The effective apparatus is proposed in the amendments we have before us.

Mr. Baetz: There is very little detail here.

Mr. Ward: The legislation provides the framework under which the administration is structured.

Mr. Baetz: I am talking not about structure, but function.

Mr. Ward: You have been a part of enough legislation to know you do not bring in and put in place your actual administration and bureaucracy in the legislation. You put in place a framework to establish it.

Mr. Baetz: I realize that, but does it come in the regulations later on or does it come through order in council?

Ms. Gigantes: All the authority is right here in the legislation.

Mr. Ward: The powers are under section 26. Section 26 establishes the framework and separates the functions. Sections 28 and 32a of the bill basically establish the powers, duties and responsibilities.

Ms. Caplan: It is appropriate for the legislation to establish the powers. The actual implementation is done through discussions with Management Board of Cabinet and, finally, through recommendation to cabinet to set up the structure and the number of persons, based on anticipated work load. That sort of thing is done as part of the setting up of the administration, after the fact. What you need in the legislation is the ability to set that up.

I can give you an example of when that happened. That was your own legislation that established the Workers' Compensation Appeals Tribunal. The legislation said, "It shall be established." It was then left to Management Board and cabinet to set up the actual structure, how many people there would be and what staff support was required, based on anticipated work load.

It is not the function of legislation to do other than permit the establishment. In fact, the government could not go forward with the establishment until it had the legislative power which posed some problems in that particular case, because until the act was proclaimed, nothing could be done.

Mr. Chairman: Are you finished, Mr. Baetz?

Mr. Baetz: Yes, except to remind everyone here that we will be proposing an amendment. Obviously, we are not debating an amendment at this point. We are still talking about the broader issue.

Mr. Chairman: We have not gone past section 8 yet, officially. I am trying to nail that down as well.

Ms. Gigantes: It might be helpful to members of the committee if we had a little sketch, if we had our flip chart come back to us and we could just look at the arrangement.

Mr. Ward: We could look at that in terms of the structure, but let us get back to the why. Clearly the why is the whole issue of the apprehension of bias. The functions have to be separated. You cannot have a group going out proactively and working with employees and employers in the development of pay equity plans and then have those same individuals put in a place to pass judgement once that process is complete. The functions need to be separated.

Ms. Gigantes: We saw some problem with that when we looked at Bill 154. We have proposed amendments around that. We may have to change those amendments or dump those amendments, depending on how this discussion goes. It relates very much to the role of the review officer. Under Bill 154, the

review officer has the right to order. If we changed the role of the review officer to one that was only mediatory, then hearings by the commission would be de novo; they would be absolutely new.

 $\underline{\text{Mr. Ward:}}$  The review officer has the right to order. The tribunal hears  $\overline{\text{the complaints}}$  and challenges on those orders.

Ms. Gigantes: I am interested in that there seemed to be some discussion here among staff. We have pieces of legislation that parallel what we are trying to do here in terms of the setting of the standards, providing monitoring, mediation and compliance mechanisms.

Ms. Herman: Although it is not an exact parallel, one of the issues in which this arose was under the Canadian Human Rights Act. You may recall the MacBain case when the whole issue of separation happened. As a result of that case, where the problem arose, they created basically a separate hearings tribunal, left the commission in the administrative, investigative, mediation and policy sense to be dealt with by a commission, and took out the power to appoint. The running of the hearings tribunal took it out of the commission.

Ms. Gigantes: Can I ask a question around that? It is my understanding that the first order of mediation and then compliance within that act is not one where the review officer makes an order. That is the element I am trying to fit into the framework here.

Ms. Herman: Although under that the review officer, the investigating officer, does not make an order, in effect the commission does. The commission decides whether a case goes to a board of inquiry under that act. So although it is not investigating officers, there are people within the administration to whom those officers report who do decide the disposition of the case, whether it goes ahead to a hearing. That decision of what happens to the case is separated from the people who actually sit and hear the case.

Ms. Gigantes: Could we compare it to the Ontario Human Rights Code mechanism where we have an inquiry officer who investigates a complaint, attempts mediation and files a report with our Ontario Human Rights Commission? If I understand the operation of the legislation, the commission then determines, on the basis of that report, whether it shall hold a hearing.

Ms. Herman: No. It decides whether to refer the matter to a hearing. A board of inquiry, which is an independent quasi-judicial tribunal, is the one that actually has the hearing. The commission does not hold hearings. The commission decides only whether to send a case on to a hearing.

Ms. Gigantes: If we compare that to this legislation, what is being proposed in the amendment is that review officers can make an order. That order can be the subject of a complaint. Is the complaint dealt with as a matter of course by the commission or is there a decision-making process that screens the number of complaints that will reach the commission?

Ms. Herman: No, there is no screening. In effect, there is an automatic right of appeal that does not exist under the Human Rights Code, because under the Human Rights Code the commission screens and decides who can go on and who cannot go on. Under this act, it is an automatic right to appeal to the hearings tribunal what the review officer has done.

Ms. Gigantes: It is these interconnected matters that lead me to wish to be able to talk to people outside this room about that process.

1200

Mr. Ward: Understood; but in fairness, I do not necessarily think the issue is the division of the commission into these agencies. I think your concerns may in fact relate more to the powers and the duties beyond this section. That is where those issues are going to come up.

Ms. Gigantes: Some do and some do not.

Mr. Ward: If the issue is the split, then fine, we can stand it down.

Ms. Gigantes: With the indulgence of the committee, let me raise one other matter that is, in my mind, connected. That is the question of whether all establishments under this legislation shall have the responsibility of creating equal pay plans or only those establishments that employ more than 100 people.

In our discussion of the question of coverage, I raised this issue. In my mind, it bears on the question of whether a review officer makes an order or simply attempts to mediate if it looks possible that mediation will be successful. It also bears on the question of whether the commission or the tribunal, under these amendments, should have some kind of screening mechanism, either self-generated or carried out by some separate element within the administration of this legislation, which says some discretion will be exercised at some level of authority under this legislation about the number of appeals that will be heard by whatever the hearing group is, however it is established.

To my mind these things are interconnected. If we have plans for all firms in Ontario, then the likelihood--indeed, I think one of the arguments in favour of having plans for all firms in Ontario, all establishments in Ontario, is that we will have more use of the legislation and that use will also entail more complaints. If we are going to have an increase in the level of complaints that we can expect in a practical way, then we may have to look at whether we should have some kind of screening mechanism. That was the basis on which our recommendations for amendment were formulated.

Mr. Ward: If we accept the concerns that you have with regard to dealing with this, then obviously we are not going to be able to dispose of this issue here and now and move to--I am going to make a suggestion that I think will be helpful. I suggest that Ms. Caplan put this amendment because I understand that other amendments have been tabled to amend this amendment. I think the discussion on those amendments is such that we can have a clearly focused debate on those issues and deal with them. That will carry us through. Then, after lunch, we can make some determinations.

Ms. Gigantes: If I can make one further proposal—it is a kind of amendment to what you are saying—in my mind, from my point of view, looking at the amendments tabled by the government, the amendments tabled by the Conservatives and the amendments we have formulated, it would be enormously helpful to understand, as we begin deciding on the process that we want to see built in, whether we are going to have plans for all establishments. If we could deal with one amendment that simply settled that question, then for me and, I think, for our approach to this whole question, that would settle out a number of other elements.

Mr. Ward: Give us a section. Let us go.

On section 10:

Ms. Gigantes: You have a section in the bill that deals with plans for everybody under 100 employees. Subsection 10(2), I believe, probably would give it to us quite clearly. We have a motion that relates to subsection 10(2) that would strike 10(2). It is not that I want to debate the content. Why do we not deal with 10(2) as it exists in the bill? Subsection 10(2) says that part II applies only to employers who have more than 100 employees, and that means only employers who have more than 100 employees have a responsibility under this legislation to create plans.

I think all the members of this committee were here the other day when I discussed that question in terms of the major issues we were concerned about in this legislation. We have had some discussion on it. I will put the case very simply for saying that we should have plans for every establishment that is included in this legislation by saying that I think it increases the effectiveness of this legislation. I think it makes it easier for the women, and there may be some men, for the people who would be provided benefits under this legislation to use the legislation.

Mr. Chairman: In terms of order, can I ask that the government amendment be moved first.

Ms. Caplan: Actually, when the Attorney General was here, one of the sections he moved and read in was section 10. I will reread it now because it is different from what is printed in the bill. He moved "that section 10 of the bill be struck out and the following substituted therefor:

"'10(1) This part applies to all employers in the public sector, all employers in the private sector who, on the effective date, employ 100 or more employees and those employers in the private sector who post a notice under section 19.

"'(2) This part does not apply to an employer who does not have employees on the effective date.'"

Ms. Caplan: That is the new section 10.

Ms. Gigantes: Would it be in order for me to move an amendment to that amendment? I do not have an amendment to that amendment prepared, but I guess the best way to phrase it is to say, "This part applies to all employers in the public sector and all employers in the private sector," or "all employers."

Mr. Ward: I think it is fair to say we had much of this debate yesterday, did we not?

Ms. Gigantes: Yes, we did.

Mr. Ward: Okay.

Ms. Caplan: Can I ask for a ruling from the chairman on that amendment?

Mr. Chairman: Would you perhaps amplify what you consider to be out of order with respect to the amendment to the amendment?

Ms. Caplan: I would like to suggest that because of the arguments that were just made about the impact of the hearings tribunal or the commission--whatever it is going to be called at the end--it does expand the

scope of the bill and the requirements, work load and so forth for the commission, and therefore would commit the government to additional resources it has not indicated a willingness to do.

Mr. Chairman: I would like to hear from the committee before I rule on this.

Ms. Gigantes: In response to that, I would say it depends. The reason we have proposed amendments that flowed from our interest in having plans for all employers in Ontario is that we also are proposing that the five-year phase-in scheme presented in this legislation, actually a six-year phase-in scheme, be compressed. Given that we wanted to see the whole nature of the implementation compressed in time, we felt there was no doubt that the complaints that might exist because of the filing of plans for all employers, say at year 2 after the legislation is passed, would all come in at once.

It was for that reason that we amended other parts of the bill relating to the role of the review officer and proposed that there be discretion about the hearing of complaints following a review officer's order. I do not think one can argue that the number of complaints is not going to create a significant increase in work load. It will create some. It is when that is combined with a more compressed schedule of implementation and the filing of plans around several hundred thousand more firms all at the same time that one can contemplate that there would be a significant and substantial increase in the work load.

## 1210

Mr. Chairman: The effective impact of the amendment you have proposed is to remove the qualifying number from the government's amendment. It is the view of the chair that this does in fact expand the scope of the bill. I could make a ruling on it. However, since I have a number of astute, capable and qualified colleagues on the committee, I will allow the committee to make the decision as to whether it deems the bill to be expanded by the removal of such a number, namely the 100.

Mr. Baetz: Mr. Chairman, I think there is no doubt--

Mr. Chairman: I am sure Mr. Baetz is aware of this, but any other speakers, the question I wish you to discuss and direct your attention to is whether the amendment to the amendment goes beyond the scope of the bill and creates an additional burden on the government with respect to expenditures. You know how I have ruled in the past on this, so perhaps you will address yourself to that, keeping in mind that we had this debate but did not have the amendment from the government put before us that we now have. If the amendment by the government is in order, which lays out the government's intention, then the amendment alters that.

Mr. Baetz: I understand your question precisely and I can answer succinctly. There is no doubt in my mind that it does substantially expand the work of the bill.

Ms. Gigantes: And you would not vote for it.

Mr. Barlow: He did not say that.

Ms. Gigantes: Be frank. We are not permitted to vote on this matter.

Mr. Chairman: We have a couple of people who have not spoken yet.

Ms. Gigantes, with due respect, you have had an opportunity to speak. Mr.

Stevenson has not spoken yet and others may wish to.

Mr. Stevenson: The results of the discussion here are somewhat academic because whether we vote to--I agree that it does greatly expand the scope of the bill, and should you make a ruling, I think it is fairly clear that we would support you. Also, if it is allowed to come to a vote, we will be opposing the amendment so all this discussion is rather academic. We can get it over fairly quickly regardless of which route we choose to go. I know you have great capability in making a very thorough and thoughtful judgement, but perhaps you wish to spare yourself all that exercise. I certainly would not want to see you rupture yourself or anything like that. We could deal with it in some other manner.

Mr. Chairman: No hernia attacks are imminent, let me assure you.

Mr. Stevenson: The bill, regardless of the importance of its social impact, is very interventionist to the extent that it is written and about to be amended. In any event, this amendment makes it that much more interventionist and we prefer to see the bill tried for a while before it is expanded to any greater extent than it is already.

 $\underline{\text{Mr. Ward:}}$  Mr. Chairman, you probably are not going to like to hear this, but quite frankly I think the preference would be that we vote the amendment as put.

Mr. Chairman: The amendment to the amendment.

Mr. Ward: The amendment to the amendment. I accept the suggestion that it probably does expand the scope of the bill, but why deal with this procedurally? It is a fundamental issue within the legislation and I frankly think it should be voted and disposed of however the committee decides.

Mr. Chairman: That would probably reach a degree of consent on the part of the committee, since those who posed the amendment to the amendment would like it to stand and those who would like to dispose of it would perhaps like it to stand as well. If that is the feeling of the committee, then there is no need for the chairman to rule, which is a great way of getting through this exercise unscathed, as you can probably realize.

Mr. Charlton: It also saves a lot of procedural arguments.

Mr. Chairman: I will place the amendment to the amendment--I believe we are clear on what it implies--moved by Ms. Gigantes.

All in favour of the amendment to the amendment? Opposed?

Motion negatived.

Mr. Chairman: I will now move to the amendment, which is the government's motion on subsections 10(1) and 10(2).

Ms. Gigantes: We have a further amendment to subsection 2.

Mr. Chairman: Mr. Charlton moves that subsection 10(2) of the bill be struck out and the following substituted therefor:

"(2) Employers who become employers after the effective date shall file with the commission proof of compliance with the act and shall post a copy of the filed material in the work place within one year of hiring the first employee."

Mr. Ward: Is that regardless of the size of the employer? That would be contradictory to the decision that was just made on the previous--

Mr. Chairman: On subsection 10(1). That was not your intent, I do not believe, was it?

Ms. Gigantes: That is correct. You are right. We will move to change that. If we could stand it down and bring back it in an appropriate form, we will do that.

Mr. Chairman: Let us do that. There may be some value in the amendment to the amendment that you are posing, but it is contrary to one that we have already passed and therefore should probably be reviewed.

Ms. Gigantes: Yes.

Mr. Chairman: That will be stood then. If we can make a note of that, we will come back to subsection 10(2) and deal with the New Democratic Party amendment to the amendment. Where do you want to proceed from here, or do you want to break now?

Mr. Barlow: We better vote on it.

Mr. Chairman: Oh, we have to vote on it? Do you want to vote on the amendment or let it stand because we have an amendment to the amendment.

Mr. Ward: Can we not vote on it without passing the section?

Mr. Chairman: If you are prepared to go with subsection 10(1), that is fine, but I have already been given notice and have allowed the proposed amendment to the amendment to be stood down temporarily, so that is really on the floor.

Ms. Gigantes: If I could just have a moment here, I think--

Mr. Chairman: Let us allow for a couple of minutes so we do not get unravelled here.

Ms. Gigantes: Having had helpful consultations--

Mr. Charlton: We withdraw.

Ms. Gigantes: --we will stand down our amendment. We intend to reintroduce it to a different section of the legislation.

Mr. Charlton: To cover your concerns.

Ms. Gigantes: We are prepared to deal with subsection 10(2) now.

Mr. Chairman: Subsections 10(1) and 10(2). All right then, if that is the case, shall the amendments to subsections 10(1) and 10(2) stand? Opposed?

Motion agreed to.

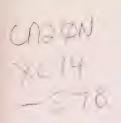
Section 10, as amended, agreed to.

Mr. Chairman: This may be an appropriate time to break. If we have agreement, we will resume at 2 o'clock.

The committee recessed at 12:20 p.m.



Publications



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

WEDNESDAY, APRIL 1, 1987

Afternoon Sitting



# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC) Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe. W. E. (Simcoe Centre PC)

Ward. C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Barlow, W. W. (Cambridge PC) for Mr. Rowe

Stevenson, K. R. (Durham-York PC) for Mr. Partington

Clerk: Mellor, L.

#### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Legislative Counsel

Evans, C. A., Research Officer, Legislative Research Service

#### Witnesses:

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Service Branch, Ontario Women's Directorate Todres, Dr. E., Assistant Deputy Minister, Ontario Women's Directorate

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

### Wednesday, April 1, 1987

The committee resumed at 2:17 p.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good afternoon, members of the committee. I believe we have a quorum, which I now recognize. I think we are ready to get under way with our discussions.

There has been some suggestion that we do a couple of things this afternoon, one of which is an administrative flow chart which was requested by members of the committee. Perhaps we can get on with that a little later.

The first item of business I recommend for your consideration is the discussion surrounding section 26 of Bill 154. I believe there are some amendments the Conservative Party wishes to move now with respect to section 26. With the concurrence of the committee, we can start with that.

On section 26:

Mr. Baetz: It is being circulated.

Mr. Barlow: It is being Xeroxed.

Mr. Chairmen: With the agreement of the committee, why do you not start to speak to the amendments? Then they will be placed as soon as they are available. If there is a problem for the members of the committee in following you, which I am sure there will not be, Mr. Baetz, knowing how succinct, articulate and direct you are in these matters, we can suspend the discussion until we catch up with the circulated amendments. Go ahead.

Mr. Baetz: I know what you are saying.

Mr. Chairman: I do not know what I am saying.

Mr. Ward: Is there another Reuben Baetz?

 $\underline{\text{Mr. Chairman}}$ : There is only one Reuben Baetz. The parliamentary assistant wanted to know whether there was another Reuben Baetz. He thought I was speaking of someone else.

Mr. Baetz: No, there is only one. That is all there needs to be.

Mr. Chairman: Let us not take a vote on that. Let us just go ahead.

Mr. Baetz: The amendment is going to propose that the minister responsible for the implementation of this legislation be the Minister of Labour and that the administrative agency be the employment standards branch. Basically, that is the recommendation.

If I may speak to this amendment, we feel the employment standards branch is the logical mechanism for implementing this very important piece of legislation. It is the appropriate one, because it has been there for many years and has developed a vast reservoir of knowhow and technical knowledge in the field.

We see this as a rather natural added dimension--obviously, quite a new one in some respects--but certainly something that would not be foreign or alien to the people in the branch or to the Minister of Labour. Over the years, as this whole issue of pay equity has been discussed here in the House and outside, many references have been made to the appropriateness of the employment standards branch being the body responsible to carry this through.

I find it rather interesting, for example, that the gentleman who occupies the front office now, the first minister of this province, Mr. Peterson, seconded a motion by Ms. Copps some time ago and said the principle of equal pay for work of equal value should be enshrined in the Employment Standards Act. Of course, we do not agree with everything the Premier says, but he was obviously on the right track.

Mr. Chairman: He said that, did he?

Mr. Baetz: He said that. I assume that the parliamentary assistant and the other members of the Liberal Party here would be persuaded and would be sensitive to what the now Premier had to say on this subject.

Mr. Stevenson: And the Minister of Labour (Mr. Wrye) supported that today.

Mr. Baetz: The Minister of Labour supported that idea today as well.

Ms. Caplan: In fact, I believe it was Margaret Campbell who first brought in the proposal for pay equity in 1978.

Mr. Stevenson: It was a Copps amendment.

 $\underline{\text{Ms. Caplan}}\colon$  The Liberal Party has long been on the record as supporting pay equity over the years.

Mr. Baetz: Yes, and as saying that it should be operated by the employment standards branch. You are on the right track. That is why we are rather surprised and a bit dismayed that it now looks as if the employment standards branch and the Employment Standards Act are going to be side-tracked on this very important legislation.

The other thing we feel is that if it were a part of the employment standards branch--

Interjection.

Mr. Baetz: Are you withdrawing the amendment? I must have said something that was-legal counsel changed his mind. No, he did not.

Quite frankly, as we look at the proper mechanism to carry this act forward, we feel--and a lot of people in the business community and a lot of taxpayers are concerned--that there is a real likelihood of, once again, establishing a free bureaucracy, a bureaucracy that is self-sustaining and not related to anything else. I have engaged, as have many of you, in the

establishment of quite a few bureaucracies in this province over many years and I have never been present or taken part in an act where we dismantled something.

Obviously, once these things are established, they tend to have a life of their own. They go on and they grow. Quite frankly, the business communities and many taxpayers are concerned that in the establishment and implementation of this legislation we do not create something that is going to go on for ever. We are all agreed that this is a serious problem at present, but we hope and believe that if it is done effectively, it will be completed in a decade or so. The likelihood of a totally independent tribunal or whatever you want to call it terminating itself is not very great.

As we look at the functions that are to be carried out and the setup of the employment standards branch, we can see virtually nothing that the branch cannot do to implement this legislation. For instance, the director of the branch can exercise the powers conferred and can perform the duties imposed upon him or her under the act. There is no problem there. The director may authorize an employment standards officer, orally or in writing, to exercise a power conferred upon the director under this act. An employment standards officer could exercise the powers conferred and could perform the duties imposed upon him or her under the act. It is all there; it is all possible.

The director can require that any person seeking a determination of any matter by the director give written notice in such form and manner as the director specifies to the persons whom the director specifies. They can conduct research, produce papers related to pay equity and related subjects and conduct public education programs related to pay equity and related subjects. They can monitor for continuing compliance with this act following the implementation of pay equity plans.

The director can also establish panels of three referees to hear any matter that the director is required to hear under section 24, and where the panel hears any matter, it may decide any issue or make any order that the director would be empowered to do or make under section 24, and so on. The decision of the majority of the members of the panel would be the decision of the panel.

When we look at the employment standards branch work and see how the branch functions, we believe this could very easily be extended to the implementation of equal pay for work of equal value and could be done in the most administratively efficient manner for the least cost and with the least likelihood of continuing on long after this very important piece of public work is completed.

That is the preamble, and I am now ready to move an amendment if you think it is in order.

Mr. Chairman: It is in order.

Mr. Baetz moves that section 26 of the bill be struck out and the following substituted therefor:

"26. The Minister of Labour is responsible for the administration of this act, and the act shall be administered through the employment standards branch of the Ministry of Labour."

Mr. Chairman: I have a number of speakers and will take them in this order: Mr. Stevenson, Mr. Ward, Ms. Gigantes and Mr. Barlow.

Ms. Gigantes: Rather than speaking, I wish first to raise a question. Would it be helpful, perhaps, given that the Conservatives--

Mr. Chairman: All right. Why not take a question then? Would you give the floor, Mr. Stevenson? I recognized your hand first.

Mr. Stevenson: Yes.

Ms. Gigantes: The question I had in mind was to understand—and perhaps you can address this when you are speaking to the amendment—why you think there would be less bureaucracy involved if you put the administration of this legislation in an existing branch rather than creating a separate branch. Would it mean fewer person—years?

Mr. Baetz: I would not say there would be less bureaucracy involved; obviously not. If there are functions to be carried out, it will require added personnel. What we are saying is that because the branch is in existence, because it is functioning, because a lot of the logistical support is already there, you could have some efficiencies at the administrative and supportive end of it. There is also less likelihood of a self-perpetuation of this thing going on long after the assignment becomes less onerous—or, in fact, let us hope that within a decade the problem is virtually solved.

Mr. Stevenson: I was going to address that very issue in my comments. The employment standards officers, as outlined in our amendments that would follow this one, would do basically the same job as your pay equity officers—I forget what the term for them is—in the separated structure you are proposing under your amendments to the sections that follow this. They would be doing essentially the same job and have the same mandate.

Under the Employment Standards Act, the referees would be basically doing the same job as your tribunal. The saving in staff is strictly going to be at the administrative level, where we hope some of the office workers and middle-management types--I would almost certainly assume that some extra people will have to be hired to look after this duty. The current staff of the employment standards branch are now looking at situations of equal pay for equal work. Of course, this is somewhat different, but it is an extension of their current duties.

### 1430

It seems to me it is a logical extension of the duties of the branch that is already in place. It is largely a matter of increasing the numbers of people in the current jobs, a minimum expansion of the administrative staff involved, because we would not be setting up a whole new group of offices. Anyone who has gone through that knows very well that there will be another little kingdom—I should not say little—a considerable kingdom developed in this particular office. Anything we can do to minimize that would be very worth while.

Clearly, if the onus on these people or the amount of work that must be done by these people begins to decrease after a number of years, and we hope that would be the case, they would already be in a branch where attrition would probably take care of any reduced numbers, because they would be there and able to take part in other jobs already in the same branch. It would allow a lot more flexibility in the administration and fewer administrative staff and, basically, people doing these jobs as an extension of what some of them are already partially trained to do.

It is a regulatory branch that employers and employees are used to dealing with. It is not going to be a whole new structure they will have to get used to and deal with. It seems to me, with a minimum of duplication, a minimum of broadening of the bureaucracy, we can use the employment standards branch to do precisely what we want it to do and what you want it to do under your amendments.

I suggest the position of the Premier three years ago or whenever Ms. Copps's motion was made showed his common sense to the approach at that point. I really wonder why, other than theatrics, you have changed your position at this point. Other than having a new organization with a new title, it is difficult for me to understand why we are creating this whole new bureaucracy when one that can handle the job very easily is already in place.

Mr. Chairman: Although this is somewhat out of sequence of the way I recognized hands, since you are making presentations on the part of the Conservative Party rather than asking questions, Mr. Barlow, was yours in the form of a support statement for Mr. Baetz or was it in the form of a question?

Mr. Barlow: It is a support statement for the motion.

Mr. Chairman: Then you may speak, and I will go to the members who may wish to address the amendments. That might be better.

Mr. Barlow: I will certainly go along with whatever you suggest, since you have the knowledge and experience of many long years in the chair.

Mr. Chairman: That is why I am the chairman, sir. Go ahead.

 $\underline{\text{Mr. Barlow:}}$  I am not finished with my interjection. As long as we have an opportunity to come back after hearing the comments of the parliamentary assistant and others who might wish to speak.

Mr. Chairman: Never attempt to limit your remarks, Mr. Barlow. I would like to get you started, but I would not care to limit you.

Mr. Barlow: In support of the motion that is before this committee, I want to say this is an area we as a caucus have supported. If this bill is going to proceed in any way, shape or form, we must make the best of it, make a good bill out of it as much as we possibly can.

The business community, as you know, has been very vociferous in opposing a new bureaucracy being set up to administer this brand-new act.I must say I am unhappy that the public sector did not proceed and have a trial period of implementation prior to the private sector's being brought into the act. It would have given everyone a better chance to understand what the act was all about and to find the loopholes and indiscretions that may have developed in the public sector, and to have corrected those before it was brought into the private sector. They of course are the people who employ the majority of the work force in this province. They do not work for the public sector.

Businesses are there to make a profit and to be competitive with other jurisdictions. Every road-block we put in front of business is going to lessen our competitive position. I do not want this piece of legislation to be an impediment to our competitive position in this great country of ours. Being the first jurisdiction, certainly on this continent, to bring in legislated private sector pay equity, if it is going to happen at all, it should be

nothing but the best plan that can be devised. One way of making a good plan is to put it under--

Ms. Gigantes: Can I make sure I heard you? You did not say that this was the only private sector legislation for equal pay because we know it is not. Quebec and the federal government have. It is a different scheme but it covers--

Mr. Barlow: Proactive private sector legislation. The business community made presentations. Some eight or 10 of them all said to this committee--I was not a party to it at the time but I read it in Hansard--that it should be part of the employment standards branch of the Ministry of Labour. My colleagues have read into the record statements made by the now Premier (Mr. Peterson) of the province and the now Minister of Labour (Mr. Wrye), who supported pay equity being part of the jurisdiction we are suggesting.

As I say once again, we are trying to make the best possible piece of legislation that we possibly can. To develop a new adversarial bureaucracy to administer this is a step in the wrong direction. To us a fundamental part of the bill is to have this under the employment standards branch, and if that is not there, we certainly are not developing a good piece of legislation.

Those are my remarks for the present time.

Mr. Ward: I would like to thank Mr. Baetz for reiterating this party's longstanding commitment to the principle of pay equity, long before we had the responsibilities of government. In fact, in going back over the course of time, as Ms. Caplan has already indicated, I think it was Margaret Campbell who introduced one of the first pieces of pay equity legislation, followed by other attempts through private member's legislation, including ones by Ms. Bryden and Mr. Rae. I think it is fair to say that every one of those, including Russell Ramsay's, made reference to achieving this through employment standards.

I think it is also fair to say that in the development of this legislation a process was undertaken, all of which members of this committee are familiar with by now. In trying to develop legislation that is very broad in scope, certainly broader than in any other jurisdiction on this continent, an attempt was made to develop an approach that was not merely complaint-based but also proactive.

# 1440

Mr. Barlow made some reference to the fact that the administrative structure contemplated by this legislation is adversarial. I would put to you that the amendments that were proposed this morning by the government clearly underline that there is nothing at all adversarial in terms of the administration of this bill. In fact, by splitting the functions of the Pay Equity Hearings Tribunal and the Pay Equity Commission, it is made clear that is not the nature under which this administration is proposed to operate.

I do not think there is any question that even if pay equity legislation were placed under an administration such as the employment standards branch, the wherewithal within that branch today does not exist to administer an act such as this. It will require a high level of expertise. It will require

capable people in responsible positions to deal with what will be a substantial work load over the course of the next few years.

Under what ministry the bill is administered was not necessarily at issue, and I note that is part of your amendment. The fact remains that to be effective, a new kind of administration will have to be established with a certain level of expertise. We feel the proposal of the commission, in conjunction with the operation of a hearings tribunal that clearly identifies and separates the semi-judicial kind of appeal process, meets all our objectives in the development of this bill. We will not support your amendments.

Ms. Gigantes: I think the background to this amendment is well understood by everyone. There was a time in Ontario history when a lot of us in the opposition assumed the problem with the Ministry of Labour and, in particular, the employment standards branch was simply that it was being run by Conservatives. We all know now that is not true.

We have had a year and three quarters of experience under a new government that indicates the problem is not simply that it is being run by Conservatives, but that there is deep trouble within that ministry. Even with a new government that says it intends to do something about those problems, we have not seen an effective clearing up of the problems in that ministry and, in particular, in the enforcement of employment standards in this province.

I think it is perfectly reasonable to look back in time and say private member's legislation would have suggested and any number of people might have supported the notion of putting this kind of legislation in employment standards. In my view, it is a very basic labour right. It is as much a labour right as the right to equal pay for equal work, which we have enshrined in our Employment Standards Act and which is totally ineffectively administered, and everybody in this room knows it.

The experience of women across this province in attempting to have that legislation, which has been on the books in one form or another since 1951, effectively administered for their protection and benefit has been pretty awful. To my knowledge, people get fired when they attempt to have that legislation brought into effect in their cases of unequal pay for equal work. They get fired and they do not get effective protection and redress through the operation of the employment standards branch.

That is the reason we are setting up a new administration; let us all be frank about it. This has been a major political commitment to a major social reform and we do not want to see it frittered away. For whatever this bill is going to be worth when we are finished with it—let us not discuss that question at this point—if we put it in the employment standards branch, we could invite Elie Martel to come and tell us about his experience in trying to get enforcement through that ministry of basic labour legislation, including health and safety legislation and employment standards legislation.

We would be delivering up a major legislative initiative to what he calls the swamp. I think he correctly calls it the swamp and I do not think there is a person in this room who would gainsay him when he says that. We all know it is true. That is a comment on the state of the administration of our labour legislation in this province. Certainly, anybody who pretends that we can take this initiative forward at this point and expect it to be effectively

administered through the employment standards branch has to be wearing blinders.

While the argument has been made by the Conservatives that this is the first proactive legislation of equal pay for work of equal value in North America and that it will therefore have an impact on the private sector, I suggest that other pieces of legislation, such as equal pay for work of equal value administered at the federal or Quebec levels, have not. We are talking about a proactivity, in other words, an equal pay planning process that we determined this morning would affect only 16 per cent of the private sector firms that exist in Ontario.

Let me underline that. Of the more than 300,000 firms in Ontario, we decided this morning--because we said that for firms with fewer than 100 people, there would be no equal pay plans and that is the proactive part of this legislation--that only 16 per cent of the private sector in Ontario will be subject to proactivity under this legislation. We are not talking about weighing proactivity on a quarter of the firms that exist in Ontario. So I think the strength of that argument really needs to be re-examined.

I certainly cannot support this amendment. If I did support this amendment, Elie Martel would kick me around the block and I think the New Democratic Party would probably ask whether I had a right to be a member of the NDP. In all my interest in seeing social justice done, workers having rights and protections and women having a chance to be treated as people in this province, there is no way I could support handing over this legislation to the administration of the employment standards branch.

When we watch businesses coming forth and suggesting that it should be done that way, they do it because they know it would be done ineffectively in the employment standards branch. Let us make no mistake about that and let us not be hypocritical about it. This is an amendment that would destroy whatever effectiveness will remain in this legislative initiative by the time we have finished passing the bill. I will not support it.

Mr. Barlow: I have two or three questions of the member for Wentworth North (Mr. Ward) who is parliamentary assistant to the Attorney General (Mr. Scott), and perhaps even for the member for Yorkview (Mr. Polsinelli) who is parliamentary assistant to the Minister of Labour. They might respond as to whether they agree with Ms. Gigantes's assessment of the Ministry of Labour.

Mr. Ward: No.

Mr. Barlow: Then can you tell me at what point your party changed its position of moving away from the Ministry of Labour with the equal pay for work of equal value?

Mr. Ward: All the legislation that I referred to in my earlier remarks, referring right back to that introduced by Margaret Campbell some time ago, those initiatives, I think it is fair to say, were based on the premise of a complaint-based model without question, as were the short-lived initiatives of previous governments in this regard. Without doubt, as the legislation evolved in the manner in which it did, it was clearly recognized that the mechanisms in the process were substantially different from anything contemplated under any existing structures, and it was determined that an agency would be necessary to administer this kind of process.

### 1450

Mr. Chairman: Do you wish to expand on that, Mr. Polsinelli?

 $\underline{\text{Mr. Polsinelli}}$ : No, I want to concur with the parliamentary assistant.

Mr. Chairman: You can do so by nodding. Mr. Barlow?

Mr. Barlow: Does the parliamentary assistant think the referees that are currently set up under the employment standards branch--if I can catch up with him here. Is he listening? Who is listening? The chairman is listening. I am going through the chair.

Mr. Chairman: I am listening. You have my undivided attention.

Mr. Barlow: I wonder whether the parliamentary assistant—he is still not coming back—is aware of any concern with the referees currently set up under the employment standards branch, whether their dealing with the new act and with disputes under the new act would be a problem for him. I can repeat it if he wants.

Mr. Chairman: I see the parliamentary assistant returning to his former place. Did you hear the question, sir?

Mr. Ward: No.

Mr. Chairman: Something told me you did not.

Mr. Ward: I am sorry. I thought I had to confer because you directed a question to both Mr. Polsinelli and myself. I thought I had better check with him before I respond.

Mr. Barlow: Are you responding on his behalf as well then?

Mr. Ward: No.

Mr. Barlow: After your conference, did you decide that you were responding--

Mr. Ward: We knew before we conferred that we agreed on the first part of your question. Nothing has changed in the process.

Mr. Barlow: But you do not agree with the New Democratic Party's assessment of the Ministry of Labour.

Mr. Ward: That is correct.

Mr. Chairman: Do you have a question, Mr. Barlow?

Mr. Barlow: Yes, I have another question. Is the parliamentary assistant be unhappy with the referees or the refereeing system that is currently established under the employment standards branch of the Ministry of Labour to deal with disputes?

Mr. Ward: Frankly, yes. I think the system that is contemplated by the establishment and the clear separation of function between the Pay Equity Office and the hearings tribunal is far preferable. You have a situation where

there is a clear-cut distinction, an avenue of appeal. I think initially the bill lacked clarity in that regard and I think the amendments we introduced and put today greatly assisted in some of the concern and misunderstanding about function. I believe this is far preferable to the system used in the employment standards branch.

Mr. Chairman: Mr. Baetz, why do you not go ahead? Mr. Stevenson is chatting for a moment. Then I will get back to him.

Mr. Baetz: I want to comment very briefly on some of the remarks by Ms. Gigantes. First, I do not share the enormous degree of cynicism that she has about business in this province. We saw that outpouring of cynicism day after day when the business delegates were here. At that time, I disassociated myself with a lot of her views and I want to go on record as saying so again today.

I must also say, and this should come as no surprise, that I do not share her observations that suggest very strongly that the NDP has a monopoly on the pursuit of social justice. I can maybe speak for two other parties here. Two other parties have a long track record of pursuing and of meeting social needs and social justice. I know you would like to claim a monopoly on that for yourself, but I, for one, will never let you get away with it, because it is just not correct.

Mr. Charlton: We do not have a monopoly. We just led you by the nose.

Mr. Baetz: I just want to restate the other concern, this business of establishing another free-standing, independent bureaucracy. That has been the pattern of the federal government for years and years and years; every time you have a problem of any kind you establish another bureaucracy. As a result, we have tier upon tier, layer upon layer of bureaucracy there. As we all know, it is very easy to establish them, but it is exceedingly difficult to terminate them.

Those people who have a concern today that in meeting this very important social issue—we do not necessarily need to set up an independent mechanism, an independent bureaucracy to do that. We will watch very closely and with a good deal of interest to see what the parliamentary assistant or anybody else—to see how their review officers or their review tribunal could do something that is fundamentally different or that is done better than could any of the officers under the employment standards branch.

I mentioned this a few days ago, I make no case for the quality and the calibre of work in the Ministry of Labour today, or maybe not even in the employment standards branch. Obviously, there has to be improvement there and would be, but we could do it efficiently and cheaply and carry out the work just as effectively. On that I rest my case. Maybe my colleagues have something more to say.

Mr. Stevenson: I would like to address the issues raised by Ms. Gigantes. Here we are talking about hiring some new people to be field officers, whatever you are going to wish to call them under the various schemes, and you are going to hire a group of people to be on the tribunal.

You are going to have a director of some form or other in a position there and whatever administrative types are needed to get the job done. Those people are going to be hired. Either they are going to be part of the overall commission or, as we are suggesting, they are going to be in the employment

standards branch. We are talking about the same people, but in our scheme we suggest there would be a few fewer middle management types required.

We have these people who are going to be appointed by the director. If you do not like the director, if you say the director is not doing the job now and you need someone differently qualified to do this, fine, change the director, but basically you are going to be hiring or appointing, one way or another, this group of people to do the various jobs, and what structure are you going to have them working under?

To think that the same group of people are going to be outstanding working for the commission and are going to be totally inept coming out of the employment standards branch--I just fail to understand the logic of that. It is a matter of getting the right people involved and the right director or the person at the top of the commission involved to make sure the job is done well, and getting on with the job. I can understand that there will be differences, but to come down to the point that the same group of people are going to work miracles under one structure and be absolutely inept coming out of the swamp under the other structure just does not make any sense to me at all.

Mr. Charlton: The problem (inaudible) the swamp.

Mr. Chairman: Ms. Gigantes wanted to speak, and I had a couple of questions to clarify.

Mr. Stevenson: I just wanted to mention the degree of separation that is involved between the hearing group and the officers who would be working directly with companies and so on. There is somewhat more separation in the Liberal amendments than there currently would be under the Employment Standards Act, as I understand it.

If you wanted somewhat more separation under the Employment Standards Act, I see no reason why our structure could not be amended to have the tribunal group appointed by order in council rather than by the director. I must admit I have not checked into that, but it seems to me that could be handled in such a way that there would be a reasonably similar separation to that being proposed by the Liberal Party.

### 1500

Ms. Gigantes: I will be very brief. I wonder whether the reality of what happens currently in the employment standards branch around equal pay for equal work is known to you. In this town, a young woman named Melissa Jones was fired in June 1985 for attempting to exercise her rights under Employment Standards Act provisions that guarantee her equal pay for equal work. Her case is still not determined, in spite of the fact that she got in touch with the employment standards branch immediately when she became aware of the problem at her place of employment.

Further, the Ministry of Labour has decided that there will be no action for wrongful dismissal undertaken by the ministry, though I believe and she believes and others believe that her case is a case of wrongful dismissal. Her case is not unusual. The length of time that we are looking at comes close to a two-year period, and the case is not determined finally in terms of equal pay for work of equal value, let alone a wrongful dismissal case.

You have to be kidding to call upon that kind of administrative

structure to deal with this legislation. In some ways, I look upon this legislation as an attempt to start afresh in terms of looking for equal pay for equal work. Surely, if employers are made to feel that there is an obligation now to provide equal pay for work of equal value, they will finally understand that they have to abide by rules that say that they pay equally for equal work.

Surely that elemental piece of instruction will occur after 25 years. It is more than that; it is more than 25 years since that legislation was first introduced in 1951; it is 26 years. You have to be kidding. We have to start afresh on this stuff or it is not going to happen.

Mr. Stevenson: Again, I would answer that the people involved in carrying out this legislation—we are talking about the same people and the structure under which they are going to work. These people will be answering to the same minister through the same deputy minister—

Mr. Barlow: The same parliamentary assistant.

Mr. Stevenson: Yes, and even the same parliamentary assistant. You talk about similarities here, and they are going to be working under the clauses that we put into this legislation and whatever safeguards and so on are built into this act. If the safeguards in other acts are inadequate, then--I do not doubt for a minute; I know for a fact--

Ms. Gigantes: They have not been enforced.

Mr. Stevenson: I am aware of some situations along the lines that you are suggesting. These people are going to be working on this act as we pass it and on whatever safeguards will be included. To suggest that the same people working on the same act are going to do a far better job under two structures that are amazingly similar, one in existence now and the other one yet to be established—as I said before, I think it is largely theatrics, because the administrative structures really are not that much different. If the people are working in a swamp now, I suggest that this group soon will be and I simply do not agree with that sort of description.

Regardless of what situation certain areas of the ministry are in now, I suggest that before too many years roll around, this one will be relatively similar to what the others are, because we are talking again about the same people enforcing the same act, and just what structure are they working under?

Mr. Chairman: Did you wish to make any further comment?

Mr. Ward: I have just one small additional comment. We are also talking about people whose function it is to administer many other aspects of labour standards beyond pay equity, and I do not think we should lose sight of the fact that there is a substantial task at hand in the evolution and preparation of something in the neighbourhood of 5,000 pay equity plans, irrespective of whatever complaints that same office will have to deal with in that period. I just do not see how your proposal enhances the workability in any way.

 $\underline{\text{Mr. Stevenson}}$ : And you are going to hire the number of people to get that job done?

Ms. Gigantes: Let us pass the legislation and hire no one. That would be perfect, would it not? The National Citizens' Coalition would do handstands.

Mr. Stevenson: Clearly, that is not going to work.

Mr. Baetz: The observation by the parliamentary assistant that already they are working on many different aspects of the labour market and the employment place at the present time surely strengthens the argument in favour of bringing this along with it. You have all the other activity in that field and this one here is going to be isolated over in right field by itself. It does not make much sense.

Mr. Chairman: I think we have had adequate discussion on this particular matter. Something tells me we have reached the point where we probably should be voting on the amendment that is being proposed. If we are ready to do that, the amendment has been moved by Mr. Baetz, so I will place that amendment on the floor and ask for those who are in favour of the amendment to so indicate. In favour? Opposed?

Motion negatived.

Mr. Chairman: The main motion then still stands, but I believe there are further amendments to section 26 on the part of the government. Perhaps the parliamentary assistant may at this time want to move those amendments.

Mr. Ward: I believe Ms. Caplan has already moved the amendments, but I think there was some understanding that we would have a quick presentation.

Interjection.

Mr. Ward: Dog-and-pony show? Is it still the desire of the committee that we have that?

Mr. Chairman: My understanding is that they have not been moved.

Ms. Caplan: I have them here. I am willing to read them again.

Mr. Chairman: Do you want them all read into the record or taken as read?

Ms. Caplan: Taken as read is fine with us.

Mr. Chairman: Have you all got them before you? I am trying to save a little bit of time. Section 26.

Ms. Gigantes: Does the placing of this motion mean that we intend to vote on it necessarily right now?

Mr. Ward: Would you rather have the chart before we make that determination?

Mr. Barlow: The chart before the horse?

Mr. Ward: The chart before the horse, as Mr. Barlow says.

Mr. Chairman: Let us make a decision on that. First, we have confirmed, I believe, according to all the advice I am getting that the motions have not been moved, so they are not on the floor at the moment. If you want to go with the chart exercise first, we can do that.

Ms. Caplan: Which is what we are proposing.

Mr. Chairman: Okay. The purpose of the chart is to outline for the members of the committee exactly what is being proposed in the administrative structure that we have been talking about for the past while, We will now ask staff to outline for us exactly what they have in mind with respect to the administration of Bill 154.

Mr. Polsinelli: Would this be an appropriate time for a five-minute break?

Mr. Chairman: If the committee so wishes, yes. Do you want to take a five-minute break?

Mr. Ward: Five minutes only, because we are--

Mr. Chairman: Yes, we are going to try to shorten up the time frame, so we will take a five-minute break. Five minutes means 60 seconds times five.

The committee recessed at 3:09 p.m.

#### 1520

Mr. Chairman: I believe we can get started again. I recognize a quorum and I will ask Elaine Todres to give us some indication of how the administrative functions would be operated. You can proceed now.

Dr. Todres: I would like to present a very brief overview, and then I will ask Ms. Herman and Ms. Marlatt to handle any technical questions that you would have pertaining to the details of the bill.

When we were looking at the amendments we chose two guiding principles, the first relating to the two functions pertaining to the two key goals, which we believe ought to be separated. Those two goals, simply put, are that we must ensure compliance by resolving disputes at a hearings board and that we have to ensure the achievement of pay equity through education, conciliation and research.

The question arises, why ought there to be a separation? We believe it is necessary for two reasons, both of which are very compelling. First, we have to avoid a conflict of interest and, second, we have to try as best we can to ensure the integrity of the appeals process and to avoid what we would call the apprehension of bias. Imagine, for example, a situation where a human resource personnel officer or a chief executive officer of a firm was dealing with a review officer, either in the disposition of a plan through an order or whatever, and advice was given and the advice was heeded and for whatever reason that company felt that it had to go to the next stage, which was to go to the commission. That places an apprehension of bias on the decisions made by the review officer in terms of what the commission may or may not do.

Those are the two compelling reasons that we feel it is necessary to separate the quasi-judicial function from the administrative and educative functions to be performed by the Pay Equity Office.

Ms. Gigantes asked us if we could just describe a bit how this looks in graph form. What we are saying is that we have a minister responsible. That minister responsible has, in the large blue square, what is known as the Pay Equity Commission. Some questions were raised about that this morning. That Pay Equity Commission under these amendments would have two operations reporting to the minister.

The first is the Pay Equity Hearings Tribunal, and in the law I think legislative counsel told us the generic terms that were used to describe the officers. In a sense there is a presiding officer and the legislation also indicates two deputy presiding officers or, in another way of looking at it, there are the members, those who are going to be dealing with the tribunal. They are dealing with two distinct kinds of activities, dispute resolution and adjudication. They are essentially dealing with what I consider to be a quasi-judicial sphere of activities.

The second, the Pay Equity Office, is quite different, and the title or description of the person in the bill is the chief administrative officer. That chief administrative officer would not only have review officers reporting to him or her but also, no doubt, educational staff, research officers and so on. This office would be responsible for education, conciliation and whatever research is required to deal with some of the nitty-gritty questions pertaining to job evaluation, methodology, particularities of various sectors and how they operate.

Another way of looking at it is in the revenue generation approach where we try very hard in all matters of administration to separate those who gather the money from those who have to deal with policy pertaining to the gathering of the money. It is considered to be a conflict of interest to have someone both signing the cheque and administering the contents of the cheque. Simply put, that is the reason for the separation of the two operations.

We thought we might have some reference to the bill itself in offering you the examples of how cases would come to the commission to the tribunal. They would arise under four circumstances.

The first would be for those companies which are required to prepare a plan where an objection to a plan were made. That objection could be ordered by a review officer, and that was covered under subsection 16(1). That automatically would go to the commission.

In the second situation under clause 24(1)(a) there is a complaint that cannot be resolved. In other words, the conciliation has not resulted in conciliation.

The third is where requested under subsections 22(3) and 23(6). If I remember, those instances occur where a person is not satisfied that the matter is vexatious or trivial or under clause (b) where the review officer would say, "I do not believe this is within the jurisdiction of the commission," and the complainant would say, "I simply disagree." In such a case, it would be referred to the Pay Equity Commission.

Under subsection 23(6), we have a situation where an employer or a bargaining agent is not satisfied with the content of the order and wants to have an independent appeal process to the commission. That indicates the intent of the separation, although I must say that for those who drafted the bill, it was always intended that the Pay Equity Commission would encompass these various separate activities. There was some concern that it was required to have this specified in law to satisfy the interests of all the deputants who came forward on all sides and who requested some clarity with respect to the nature of the appeals process and the manner in which the commission was to be set up.

I will put the picture back on if you have any questions.

Ms. Gigantes: I have two questions. Yes, that is the picture. You said the Pay Equity Office would be responsible for three matters, which are education, conciliation and research. There is another matter, as it still stands in your amendments, which is ordering. I want to come back to that. A review officer making orders comes under the aegis of the Pay Equity Office.

The second question relates to the final chart.

Dr. Todres: I will put that down.

Ms. Gigantes: On the next chart, can you show us how a person gets section 6 upheld under that process and the four routes of the hearings tribunal? I may have missed it, but I do not see anything under those enumerated sections that says you can make a complaint that the employer has not established and maintained compensation practices as under the bill, or that an employer or bargaining agent has bargained for or agreed to compensation practices that, if adopted, would cause a contravention of subsection 1.

Ms. Herman: Subsection 21(1) of the bill provides that a complaint can be filed if there is a contravention of the act. A contravention of the act would include a contravention of subsection 6(1), the general prohibitions section. Then that would go into the investigation and conciliation stage and would go under point 2, the complaint cannot be settled—

Ms. Gigantes: Clause 24(1)(a).

Ms. Herman: --which would end the person up at the Pay Equity Hearings Tribunal for a hearing.

Ms. Gigantes: If we look at section 21, subsection 1 is a general complaint process, subsection 2 deals specifically with the plan and subsection 3 is a combination of complaints.

Ms. Herman: That is right.

Ms. Gigantes: You feel there is a direct line from subsection 21(1) to section 6.

Ms. Herman: Yes, because a contravention of section 6 would constitute a contravention of the act. You complain under section 21 that subsection 6(1) has been contravened. Then you go from there to section 22, which provides for the investigation and settlement process.

Ms. Gigantes: Okay.

### 1530

Mr. Polsinelli: I have a question with respect to the relationship between section 23 and section 24. It is my understanding that if a review officer is going to try to act as a conciliator in an endeavour to effect a settlement, if the review officer cannot effect a settlement, can he then issue an order?

Ms. Herman: The review officer has a choice at that point. If he or she is unable to effect a settlement, it can go straight to a hearing or the

review officer can attempt, under section 23, to resolve it by an order. If the parties are unhappy with that order, they can end up at a hearing as well.

Mr. Polsinelli: Where there is not an agreement between the parties and the review officer chooses to issue an order under clause 24(1)(a), does the commission then have to hold a hearing?

Ms. Herman: If everyone is happy with it, there is, in effect, a settlement.

Mr. Polsinelli: Then he would not have to issue an order.

Ms. Herman: If there is a settlement, there is no need for an order. That is right. If there is an order that no one has appealed--

Mr. Polsinelli: No, my question is simply a technical one. If the review officer issues an order, I think an assumption can be made that there was not a settlement; otherwise there would not be an order. If that assumption is correct, then under clause 24(1)(a), the commission must hold a hearing. Why give the opportunity for objections if the commission must hold a hearing? I think there is something sloppy there. Perhaps I am misunderstanding it.

Ms. Herman: The intent of providing the ability to have orders is to see whether it can be resolved without necessitating a hearing. If the review officer thinks that it cannot be resolved in any case, he or she will probably just send it immediately for a hearing. If the officer thinks that perhaps an order will help speed up the process by making a hearing unnecessary and thinks that it may not be appealed, I suppose—because if it is appealed, then you end up at the same point anyway at the hearing.

Mr. Polsinelli: That is exactly my point. If the review officer issues an order that under clause 24(1)(a) the commission shall hold a hearing—the review officer has issued an order because, in effect, there was no settlement—in my opinion there is no necessity for anyone to file an objection.

Ms. Herman: Mr. Revell, do you want to try this? I know that you have your views on this process.

Mr. Polsinelli: Unless the only way the review officer can issue an order is if both parties consent to the order, in which case there is a settlement.

Mr. Revell: First, there is a motion in the government motion package to clarify the right to a hearing with respect to subsection 23(6). I do not know whether that was put on the table.

 $\underline{\text{Mr. Polsinelli:}}$  I saw it, but that only gives the complainant the right to appeal.

Mr. Revell: No, the employer or the bargaining agent, as well, will already have the right to appeal and this extends it to say that the complainant would also have a right to appeal.

I do not see that it is inconsistent that a review officer goes in, finds something and makes an order. At law, he may not be able to reach a settlement whereby everybody puts a signature on the page. If the review

officer sees a good and sensible settlement to the problem and makes an order, then the onus shifts to the people who are affected by the order to decide whether they will appeal it. They may not agree with it but they will accept it if the order is imposed on them.

Mr. Charlton: Especially if it is reasonable.

Mr. Revell: It is going to be reasonable in the review officer's opinion, but that is why the appeal mechanism is there. I think what was brought up before was, "What happens when this does happen and the reason the review officer went in in the first place was that a complaint had been filed?" It would appear that, the way it was drafted before, there was an argument that you could say there was no right of appeal. I am not so sure that was the case because, in that case, there would have been no settlement of the original complaint. That would have had to have been referred, but now everything flows through. Either you get a settlement or you have a right to a hearing if an order was made. I think it makes good logical sense to bring finality to a situation.

Mr. Posinelli: Let me give you this scenario: Perhaps you can tell me where I am wrong. I am a stubborn employer who does not believe in pay equity.

Ms. Caplan: This is absolutely hypothetical.

Mr. Posinelli: Absolutely hypothetical, exactly. In a democratic society, a capitalistic country, I believe that I should be entitled to pay slave wages if I want, as long as people are prepared to work for that. I have a work place. One of my employees files a complaint. The review officer comes in and I say to him: "I do not believe in any of this stuff. You have the right to look at my books and do whatever you want, but I am not going to do what you say." The review officer looks at my books, examines the job classifications, makes a number of comparisons and issues an order.

I refuse to abide by that order. A year and a half goes by. The commission then commences enforcement proceedings, charges me and wants me to pay some of the penalties imposed under the act. My lawyer then goes to court and says: "Your honour, pursuant to subsection 24(1) which says that the commission shall hold a hearing if a review officer is unable to effect a settlement of the complaint, my client did not consent to that order. There was no settlement of that complaint and therefore, until the commission holds a hearing, I do not have to respect or abide by that order."

Mr. Revell: In my opinion, the order that will be made is an order that is being made under section 23. It is not going to be an order made with respect to the settlement. Section 23 contains its own enforcement mechanism whereby, under subsection 23(5), if there is a failure to comply with an order the matter can be referred to the commission.

Everybody who was involved in the process will agree that, yes, time is going to be consumed. That is one of the points you have been making about the bad-faith situation. But the act does provide, particularly with respect to the implementation of plans and so on, that the first payout date is back to the dates set out in clause 12(2)(e) of the bill. It may be slow justice, but if the person continues to be recalcitrant and fails to abide by orders of the commission, there are penalty provisions in the act. A provincial offence is created under the act and fines can be obtained through the courts.

There are a number of different things flowing and if the situation is absolute bad faith, I do not know whether we have ever written laws that protect against absolute bad faith.

Ms. Caplan: Mr. Polsinelli, I think there is one point that was perhaps not clear and I would like to point it out to you. In a case such as that, where you are obviously dealing with someone who is dealing in bad faith and saying he is not going to abide by the order, the officer can order a hearing.

Mr. Polsinelli: What if he does not?

Ms. Caplan: He would. In fact, the onus of responsibility is on the review officer knowing with whom he is dealing. The other is that a hearing could also be requested by the complainant in that situation where he knows he is dealing with a bad-faith employer. I think there are safeguards in there to ensure that the process can kick in when you are so clearly in a situation where you are dealing with someone in bad faith. The protections are there, as I see it. Is that correct?

Mr. Revell: I agree with Mrs. Caplan on that point.

Mr. Polsinelli: Perhaps I do not understand what a settlement is and what an order is. I am going to review this again, but I am a little concerned when section 24 says that the commission shall, which is mandatory, hold a hearing when a settlement cannot be effected. That means to me that if a review officer is going into an establishment and he cannot have consent or consensus from both parties that a certain order will issue, he has not effected the settlement and in that situation, under clause 24(1)(a), the commission must hold a hearing. Obviously, I do not understand these terms as well as I should and I will review them again.

### 1540

Ms. Gigantes: What are you looking for? Are you looking for phraseology that would say if a review officer is unable to effect a settlement of a complaint or have an order followed? What are you looking for there?

Mr. Polsinelli: What I am concerned about is the recalcitrant employer--

Ms. Gigantes: I understand.

Mr. Polsinelli: --in a complaint-based situation.

Ms. Gigantes: What are you looking for in terms of a change here?

Mr. Polsinelli: In terms of a change, I think clause 24(1)(a) should be reworded. I appreciate the appeal mechanism and the protections that are set up in section 23 and I agree with those, but irrespective of those, when I go to section 24, it says irrespective of the ability to make the order. If that order has not been on consent, you have to have a hearing.

Ms. Gigantes: That is right; I agree.

Mr. Polsinelli: I think the phraseology of section 24 should be

changed so that you would have a hearing only when there is an appeal. I do not see that in section 24.

Ms. Gigantes: When there is an appeal or when a review officer feels an order is not being obeyed.

Mr. Polsinelli: You should have a hearing when a review officer refers it--

Ms. Gigantes: Yes.

Mr. Polsinelli: --or when there is an appeal. Under section 24, as I read it, and I am probably reading it incorrectly, where the review officer has issued an order and that order is not on consent, then a hearing must be held. As I say, I am probably reading it incorrectly.

Ms. Gigantes: I agree.

Can I ask what I think may be a related question? It follows on the earlier question I asked about the enforceability of section 6 by the employee through the mechanisms of the bill.

I was referred first to subsection 21(1) that allows an employer or an employee or bargaining agent to file a complaint with the commission that would relate to section 6. Then I was referred to clause 24(1)(c), which reads, "The commission shall hold a hearing...if a review officer refers the matter to the commission under subsection 23(5)." Subsection 23(5) reads, "Where an employer or bargaining agent fails to comply with an order under this section, a review officer may refer the matter to the commission."

If that is a way of getting at section 6, it seems to me a very convulated way and I think I would lose my way trying to get section 6 enforced in that way.

Ms. Herman: You only get there if there is noncompliance with the order. If there is compliance with the order or if it goes to a hearing and there is an order of the tribunal, you deal with it as an order of the tribunal, which can be enforced like an order of any other administrative tribunal. It would be filed in the Supreme Court of Ontario and you could also initiate under the offences section under the Provincial Offences Act. Section 25 is the sort of general offences section.

Ms. Gigantes: I am prey to Mr. Polsinelli's inexperience. If we start with my attempting to exercise a section 6 right by an application under section 2l(1), you tell me I move then to clause 24(1)(c)?

Ms. Herman: No, you move to section 22.

Ms. Gigantes: I move to section 22, and under 22, I say what?

Ms. Herman: The case is investigated.

Ms. Gigantes: By the officer.

Ms. Herman: An attempt is made to effect a settlement. If it is settled, that is the end of it.

Ms. Gigantes: And if it is not?

Ms. Herman: If it is not, it--

Ms. Gigantes: Goes to section 23?

Ms. Herman: The hearing route, or the review officer could interpose between those two steps with--

Ms. Gigantes: With an order?

Ms. Herman: -- the order.

Ms. Gigantes: It is a very convoluted way, it seems to me, of getting at section 6 rights.

Mr. Ward: How is it convoluted? It might be convoluted in terms of reading the act, but I do not think it is a convoluted process.

Mr. Stevenson: It has taken us an hour to figure out how it works.

Ms. Gigantes: In my mind, were I looking for section 6 rights, it would mean I would have to get a lawyer.

Mr. Ward: Why?

Ms. Gigantes: Because I would be going to a review officer and saying, "I believe my section 6 rights are abridged," and the review officer would make a determination whether they were. The review officer might or might not issue an order, which might or might not automatically get me a hearing if the situation, whatever it was, prevailed.

Ms. Herman: If the review officer does not issue an order, then you are in the situation where there is no settlement and you get the hearing.

Ms. Gigantes: I have to pursue the matter of no settlement, because the review officer has attempted to effect a settlement. There is nothing that says he has to refer the matter to the Pay Equity Commission, so I am going to have to take an initiative there.

Ms. Herman: No. It says, "The commission shall hold a hearing."

Ms. Gigantes: But I have to go to the commission and say, "The review officer did not even issue an order."

Ms. Herman: No, it becomes an administrative matter. At that point, when there is no settlement, the file gets passed on to the Pay Equity Hearings Tribunal. It is a passage of the file, and the tribunal sets up a hearing.

Ms. Gigantes: It will not get passed unless I ask for it to be passed.

Ms. Herman: It requires them to do it. If they are not following their legislative mandate, one can use other means.

Ms. Gigantes: The review officer is not necessarily carrying forward my case.

Mr. Charlton: The question Ms. Gigantes is raising is how the question that there has been no settlement come to the attention of the commission. They send in a review officer to do an investigation. He can investigate and say, "You do not have a complaint, lady," or he can investigate and impose an order. Right? If he does not impose an order, how does the commission know he has not gone back to the woman and said, "I have investigated your complaint and you ain't got one"?

We go through this stuff with the Workers' Compensation Board all the time. Nothing goes on automatically. When you get stopped at one stage, you have to take on the next stage yourself. That is the way administrative tribunals work. Nothing ever happens automatically in that kind of situation. Somebody has to say, "There has been no settlement."

Ms. Herman: It should be the review officer's job to say, "This case cannot be settled," and then pass it on to the next stage. It is the review officer's job to say, "I am the end of the route," and pass it on.

Mr. Charlton: We are saying if that is not how it gets defined in the regulations, we will have a problem. What happens with all the rest of the administrative tribunals we deal with is that the review officer investigates and sends the complainant a letter saying: "Sorry. I could find no fault. You may appeal this if you wish." Ms. Gigantes is asking how they find out what the next step is.

Ms. Gigantes: I would get a lawyer; that is how.

Ms. Herman: It is not the job of the review officer to send a letter saying there is no case. It is the job of the review officer to investigate and try to effect a settlement. If a settlement cannot be effected, at that point, he passes the file on to the tribunal to have a hearing.

Ms. Gigantes: Let me suggest what I am trying to get at, which is to spell out the direct line of steps that would be taken by a review officer in such a case towards the enforcement of a section 6 right. I look at 6 as a very important section, because it is the overall entitlement of the act that is summed up there.

We are not talking about the peculiarities of a comparison, the peculiarities of a plan, the implementation of a plan or the posting of a plan; we are talking about the broad rights an employee should have under section 6. Unless you can use those rights under section 6, you can get stuck with being told: "You have appealed under the wrong section," or "That is not really a plan complaint, but a complaint about implementation." It can get enormously complicated for an ordinary human being.

I am wondering whether there is not a way we could make the process you have just described clear as to steps in the legislation. In fact, it might answer some of the concern you have, because it would call upon the review officer to follow through either situation in a specified way.

#### 1550

Mr. Polsinelli: I just discussed this matter with legislative counsel. I think they are going to be taking it up with the Ontario women's directorate to make some minor amendments that may take care of my concerns.

Mr. Ward: We can take this item under consideration. In fact, some

simple wording can clarify that so that it flows. The one brief concern I have is that we started this discussion with an amendment to section 26 to split the functions.

Ms. Gigantes: They are all related, though.

Mr. Ward: I think we have gone well beyond what those amendments cover.

Ms. Gigantes: Could I suggest—I think I have tried to do this before. We have tabled amendments that would, in the same way as the government amendment, call upon review officers to make orders. It has been an open question in my mind whether that is the best way to proceed, given that a review officer is going to have all orders that he makes open to appeal. That is the way it is laid out, both in the government bill and in the government amendments, and that is the way we may well go. If all can be appealed, then I think we have to look very carefully at whether it is worth having orders.

Does the existence of somebody who gives an order make the process of mediation meaningless? There will be those who will argue that. I do not have sufficient experience to answer that question for myself easily.

Mr. Chairman: Could I ask legislative counsel to make some comments with respect to this point? Apparently, there may be some minor adjustments that could address the questions you are raising.

Mr. Revell: I think the parliamentary assistant has already spoken to part of that. I believe the one issue that Mr. Polsinelli has brought up, clarifying the relationship between section 22 and section 23, can be resolved by a simple amendment to clause 24(1)(a).

We do not have the finalized wording on it, but effectively, it would provide that if a review officer is unable to effect a settlement of a complaint and has not made an order under section 23, that is when you would hold a clause 24(1)(a) hearing. If he has made an order under section 23 with respect to something flowing from a complaint, then you are into the section 23 review mechanism rather than the section 22 review mechanism.

Ms. Gigantes: I did not think I was ever in the section 22 mechanism. Were you? It was section 23. In fact, the difficulty I have arises under section 23 as opposed to section 24, which says what the review officer must do.

Mr. Polsinelli: I think you are opening up the discussion of whether it is worth while for a review officer to have the ability to make an order. I think it is. The review officer will go in and try to effect a settlement, and there may be one, two or three minor outstanding issues that the parties cannot agree on.

The fact that the review officer has the ability to make the order would mean he would impose a settlement on them of those one, two or three minor points that they have not agreed on. The fact that he has made the order may be enough to keep the parties from appealing it and just be happy with it, rather than, if there is one minor item that cannot be agreed upon, automatically having to go to a hearing before the commission. The employer may find that it is better to concede on one small point that the review officer has decided in favour of the employee rather than going through the expense of having a hearing. I think it is a good intermediate step.

Ms. Gigantes: I suspect there will be employees who feel they would rather have a hearing before a commission than have to appeal an order and go to a commission. The presentation of their situation might be more easily done in a situation where they were having a hearing before the final tribunal, whatever the nature of that tribunal.

Mr. Polsinelli: I do not know whether that will always be the case. If we are locking at all the possible situations, I think we would want to create a system where the number of hearings that were held before the commission would be minimal or as few as possible. If we eliminated the route of the review officer having the ability to issue the orders, the number of hearings before the commissioner would be a lot greater and might bog down the system.

It might also put an unnecessary burden on the employees who have just filed the complaint under the complaint-based mechanism. If the employer is a recalcitrant employer, let us say, and does not want to effect any type of a settlement, then the only recourse that the employee would have is a hearing before the commission, but if the review officer has the ability to issue an order, then it is the employer who is going to have to decide whether he is going to take on the additional expense of a hearing before the commission.

I see what you are saying but, in terms of weighing the two, I think it is more in the employee's favour to have the review officer being able to issue the orders.

Mr. Ward: I wanted to get back to the amendment that is on the floor, which relates to distinguishing between establishing a separation of the Pay Equity Office and the Pay Equity Hearings Tribunal. I have some trouble understanding whether the concern of the third party is the fact that a hearings tribunal exists. It is fine to talk about some disagreement that you may have about whether the review officer should have the ability to issue orders, but section 26 deals with the establishment of a hearings tribunal and the separation of the two functions. That is what we wanted to resolve. I know that the explanation and the structure naturally led to that discussion.

I just want to know whether we can resolve that separation so that we can proceed through the bill and, I am sure, have a full debate, giving us all some time to look at some of the mechanisms that kick in. I think it is clear that the functions are and should be separated, whatever the roles may be, ultimately. I think it is fundamental for us to proceed. That does not mean we have to move to those issues, and it gives us all some time.

 $\underline{\text{Mr. Chairman:}}$  Having received that explanation of the administrative flow, we are still dealing with the section and a proposed amendment.

Mr. Stevenson: I have a point of order. In the light of all the lengthy discussion we have had here and the difficult wording of this bill, I think it is rather apropos that the government arrange to have violins playing out in the hall this afternoon. However, I am quite surprised that they made a request to have them play the same old song.

Mr. Ward: The song that was being played was a dirge, and it is outside your offices as a result of the latest polls.

Ms. Gigantes: Let us have a vote.

Mr. Chairman: We do not have an amendment yet, which I am asking to

be placed. Perhaps I could get Ms. Caplan to move the motion for the amendment, then we can move on that and have a vote on that.

Ms. Caplan moves that section 26 of the bill be amended by adding thereto the following subsections:

- "(2) The commission shall consist of the Pay Equity Hearings Tribunal and the Pay Equity Office.
- "(3) Such employees as are necessary for the proper conduct of the commission's work may be appointed under the Public Service Act to serve in the Pay Equity Office.
- "(4) The commission shall, if appropriate, use the services and facilities of a ministry, board, commission or agency of the government of Ontario."

We have had quite a bit of debate on this point, although not on this specific amendment. Are there any other comments, or are you in a position now where you can vote on the amendment?

Mr. Baetz: You have not specified any minister, have you?

Ms. Caplan: No.

Mr. Ward: That will come under definitions.

Mr. Baetz: Okay.

Mr. Chairman: Shall the amendment carry? Opposed?

Motion agreed to.

Mr. Chairman: Shall section 26, as amended, carry? Opposed?

Section 26, as amended, agreed to.

Mr. Chairman: Do you want that recorded, Mr. Barlow?

Ms. Gigantes: He cannot do that.

Mr. Barlow: I asked for it the last time.

Mr. Chairman: Is this a stand-alone position you are now taking?

Interjections.

Ms. Gigantes: We just want to double-check that we are doing everything in order here.

Mr. Chairman: We are not doing everything in order. You know that. What we are doing is-

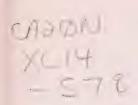
Mr. Charlton: What you understand as order and what we understand as order is-

Ms. Gigantes: Within the class of work that we are looking at at the moment.

- Mr. Chairman: Absolutely; I fully appreciate that.
- Ms. Gigantes: On section 26, we will want to discuss the question of equal pay and pay equity when we get to definitions and more general sections within the bill, and we will leave it until then, if we may.
- Mr. Ward: You will have many opportunities to deal with the amendment that you proposed here, other than section 26.
  - Ms. Gigantes: That is correct. We just give notice. Thank you.
- Mr. Chairman: All right. Since we have reached the hour of four o'clock and there are some who may wish to get away early because of other commitments they have this evening, do you want to break now or do you want to get into something else? It is entirely up to the committee.
- Mr. Ward: I think it is an approporiate point to break, and we can start at section 2 on Monday.
  - Mr. Chairman: That would be appropriate, because we could--
  - Mr. Charlton: But you said that last week and changed your mind.
- Mr. Chairman: No, in fairness to the parliamentary assistant, Mr. Stevenson did indicate that he wanted to set down section 2 to have some further discussion with some of his colleagues, with respect to the number 10 as it relates to the minimum qualifier in the legislation.

If there is no further business to come before the committee, I will ask for a motion to adjourn, which is moved by Mr. Polsinelli. All in favour? Carried.

The committee adjourned at 4:02 p.m.



Morning Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
MONDAY, APRIL 6, 1987



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC) Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe. W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

# Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor Barlow, W. W. (Cambridge PC) for Mr. Rowe

Clerk: Mellor, L.

#### Staff:

Revell, D. L., Legislative Counsel Schuh, C., Legislative Counsel

#### Witnesses:

From the Office responsible for Women's Issues: Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, April 6, 1987

The committee met at 10:15 a.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Members of the committee, good morning. I do recognize a quorum, so we can get under way.

I should indicate to the members of the committee that the clerk of the committee has prepared a revised package of the remaining amendments, which is in fact integrated, with all the amendments of the various parties in order. This is not a new package, so if you want, for purposes of simplicity, you can effectively set aside the package of amendments you have been carrying around to this point, which is rather large and extensive, and you can refer to the new package, which has all the information you will require through the duration of our deliberations on Bill 154.

I believe when we adjourned on Wednesday of last week, there was an agreement that we would not deal with section 2, which was left outstanding. If it is in the committee's interest at this time, we can go back to section 2 and start at that point and try to follow in some form of chronological order.

Ms. Caplan: It would be different.

Mr. Chairman: Yes, it would be different to follow this bill in chronological order. Is that your wish, members of the committee, or do you have any other views you want to put on the floor before we get started?

Ms. Gigantes: Can we have a moment to think about that?

Mr. Chairman: That we go in chronological order or start at section 2? I make that point because, as you will recall, I believe it was Mr. Baetz speaking for his party who requested that we not deal with section 2 until Monday. Mr. Baetz, I assume you are ready to go today with that.

Mr. Baetz: Yes, I am.

Mr. Chairman: That being the case then, we can start with that section.

On section 2:

Ms. Gigantes: Mr. Chairman, we had an amendment which the Conservatives had asked time to consider. I believe that is on the table and all we had done was simply defer it. Our amendment would have the effect of changing section 2 so that the application of this legislation would be to all places of employment. The bill as it reads now refers to places of employment in the private sector of more than 10 employees.

Mr. Chairman: All right. It was not moved previously, so I will take that now as an official amendment which has been appropriately placed by Ms. Gigantes.

Ms. Gigantes: I can read it for you exactly, if you like.

Mr. Chairman: All right. To remove the number 10 and move it to zero is effectively the impact of that amendment, if I am reading it correctly.

Ms. Gigantes moves that clause 2(1)(b) of the bill be struck out and the following substituted therefor:

"(b) to all employers in the private sector; and."

If it is clear what the results of that amendment would be, I can give Ms. Gigantes the floor perhaps to explain what the intent of her party is and any responses you might have in connection with that. This is an important part of the bill, as we are all aware.

## 1020

Ms. Gigantes: As members of the committee are aware, the legislation before us covers all employees in Ontario except those in establishments with fewer than 10 employees in the private sector. The effect of the exemption for private employers with fewer than 10 employees means that, in terms of 1985 estimates, about 240,000 women will not be covered by that one exemption alone. We already have enough other exemptions within this legislation—in fact, too many as far as we are concerned. We would like to see those 240,000 women, roughly, brought under the aegis of this legislation and, at least as the bill now stands, able to lodge an equal pay complaint.

As the bill now stands, there will be no equal pay plans for women who are working in places of employment with fewer than 10 employees nor for women working in private sector establishments with fewer than 100 employees. This at least would give them the right to lodge an individual complaint or a group complaint that an employer was not paying equal pay for work of equal value within that establishment.

Mr. Baetz: We have certainly given a lot of time and thought to this subject as well, and we really feel that for now, the way the bill stands is the appropriate way to go. It is amazing how many very small operations this would include if we were to extend it to employers of 10 employees and under in the private sector.

For instance, I was amazed—and this comes out of the Statistics Canada labour force survey—that by extending it to employers of 10 employees and under, we would be including 243,180 additional employers. It certainly shows that Ontario has a very large number of very small employers having very few employees. Many of these are almost informal, ma-and-pa operations, and to include them at this time in this legislation, we feel, would be premature.

We intend to support the government's motion that the 10 and under be excluded. We heard it when the business community came here, and we even heard the larger employers say, "If you are going to include us, where we have a more sophisticated personnel department or human resources branch and where we are established to look into these questions, the least you can do is not include the very small employers who in many cases do not even have a personnel officer or a human resources officer and where a lot of the employment is really carried out in a very informal way."

We feel we should be sensitive to the concerns of business and, particularly, the small business at this point. Mr. Barlow is our critic for small business, and I am sure he will have some comments to make on this subject.

Mr. Chairman: Just before Mr. Barlow gets the floor, Mr. Baetz, during your remarks you said "10 and under." I believe you meant 10 and over or nine and under.

Mr. Baetz: Nine and under, I am sorry. Thank you for correcting me.

Mr. Chairman: I just wanted to make sure that is what you meant.

Mr. Baetz: That is exactly what I meant, and I appreciate your correcting me on a Monday morning.

Mr. Chairman: That is what chairmen are here for. I sat up all night waiting to offer you that advice.

Mr. Baetz: Thank you very much. I appreciate that.

Mr. Barlow: Mr. Chairman--

Mr. Chairman: I had Ms. Gigantes next. Do you want to allow the two to go or do you--

Ms. Gigantes: If I could ask a question, it might be helpful to the subsequent discussion. I would like to know where Mr. Baetz gets figures that indicate that 243,000 firms would be affected by a decision that fewer than 10 in an establishment meant compliance with this legislation. According to the best figures I have available, there were only 238,800 employees in 1985 who were employed in firms--I guess those are female employees--

Mr. Baetz: Female employees, yes.

Ms. Gigantes: --with fewer than 10 employees.

Mr. Baetz: That is right.

 $\underline{\text{Ms. Gigantes}}$ : But, Mr. Baetz, if you take the estimate we have of 300,000 and some firms in Ontario, are you telling us that 243,000 of those employ fewer than 10? That is just not the case.

Mr. Baetz: I did not do the survey myself; I simply quote from the authority on the subject, and that is the employment data based on the 1985 Statistics Canada survey of labour force annual averages and Statistics Canada census. Affirmed data have been based on a business register. It is right here.

Mr. Ward: Could I help out on this? One of the difficulties is that the information that is generated on this is a list of the number of private sector firms. A lot of people go out and get a corporate number and incorporate and come under the definition, and they may go out and do it one or two or three times for various tax shelters. Most farmers now set up a corporate entity. So one of the problems is that when you are dealing with the number of private sector firms, in reality you have 243,000 private sector firms.

Mr. Charlton: What you are saying is that a lot of those registrations are not employers, though.

Mr. Ward: What is fair to say is that a lot of those firms would be exempted by the fact that there is an exemption from the bill for a private sector firm that has no employees.

Ms. Gigantes: Obviously.

Mr. Ward: In fairness too, Ms. Gigantes, there is also the converse of the argument when you are always using the percentage figures on the firms. The relevance of all that becomes somewhat suspect when one considers how many firms in this province are one person or two people.

Mr. Chairman: With no employees, perhaps.

Ms. Gigantes: I agree with you, but the meaning of what you have just said is that a lot of these small firms which employ 238,800 women, according to 1985 Statscan figures, will have no employees at all.

Mr. Ward: That is right.

Ms. Gigantes: I find it really difficult to understand how the figures we have been given on the number of firms in Ontario can coexist with the fact that you say a number of these firms are going to be excluded anyhow because they do not have employees, which is obvious, and that we are being told at the same time that 243,000 employ fewer than 10. That just seems utterly incredible.

Mr. Ward: That is the fact.

Ms. Gigantes: There is some confusion in some of these figures, as far as I can make it out.

Mr. Ward: Where is the confusion? There are 243,000 registered firms in Ontario that have nine or fewer employees. That is legitimate fact. That is a reality.

Ms. Gigantes: I wonder if you would circulate that information.

Mr. Barlow: It was circulated to this committee last week.

Ms. Gigantes: I have not gotten it.

Mr. Ward: Ms. Gigantes, you will recall, during the course of our committee hearings, we reproduced this. It was in memo form as part of a response to a question about the characteristics of various firms which had been asked by your leader in the Legislature. Those data were circulated, and we are happy to circulate them again.

Ms. Gigantes: I would be happy to have another look at it, if you would not mind circulating it again, because I think I have left it behind in the material in my office.

Mr. Baetz: Also, as part of the answer to Ms. Gigantes's observation, it should be stressed that we are talking about the number of female employees--238,000--in these 243,000 firms. It may indicate that in a lot of these very small firms, there are mainly male employees. I do not know.

Ms. Gigantes: It certainly would indicate that, would it not? That is simple subtraction.

Mr. Baetz: Or that it is a numbered company; I do not know. The thing that really struck us was that by encompassing only 238,000, and there are 1,592,000 female employees in Ontario, you would be casting a net to get a relatively few females added into it. You are casting a net out to an enormous number of corporations with all the administrative costs involved and the difficulties and so on. It underlines the wisdom of saying: "For now, let us exclude nine and fewer. Let us not catch them in this net with this legislation."

## 1030

Mr. Barlow: Following the point that was just being discussed, certainly that would include any person who applied to have a business registered—the person who sits at home and knits sweaters and then registers herself as a business to sell those sweaters at a fall fair or something. I use that example because I had a booth at a fall fair right next to a gal who does that. She knits sweaters and is a registered one-person corporation. She is registered with the Ontario Ministry of Consumer and Commercial Relations as a business.

Ms. Gigantes: Then you do not have to worry about that.

Mr. Barlow: I know, but that person is included in that number of 243,000.

Ms. Gigantes: That is right.

Mr. Barlow: Just to help clarify that point, there is no question about our party's position on this particular amendment which has been put before us by the NDP. There is no possible support from our party for including all private sector employees. The facts and figures clearly state to us and the province that these small businesses are the ones that are expanding and creating jobs, and to put a roadblock in front of them so that they have to deal with a further level of bureaucracy is something we cannot support.

In the presentation and delegation stage, small business made presentations to the committee that it would like to see this figure raised in many cases to as high as 50 and fewer employees, which of course would take in a far greater number. I do not think I could support 50 and fewer employees. I certainly could support something in the range of fewer than 20 employees. It is not an amendment of ours, but it is certainly something that business feels would be acceptable in order to continue creating jobs in the economy.

I am convinced that this total legislation package is going to create a loss of jobs in many cases. The people it is designed to help are not going to be helped. In many cases, companies are going to find ways to eliminate jobs so that they do not have to deal with the Pay Equity Commission that the government has proposed be set up. For that reason, we feel we cannot support anything that is going to hurt many women in society. Certainly, there is going to be some benefit from this legislation where there is true discrimination, and where there is true discrimination, that should be dealt with: there is no question about it.

In summary, as, I feel, a spokesman for small business, I cannot in any way support this amendment that is before us at the present time.

Ms. Gigantes: I will just outline once again why we feel this amendment should pass. I do not know why Mr. Barlow would feel that

discrimination is not true discrimination if it happens in a firm that has fewer than 10 employees. What we are proposing here is not a mass administrative nightmare for small businesses. We are proposing that female employees of those businesses where there was discrimination could lodge a complaint under this legislation. What we are doing, unless we pass this amendment, is saying that for 240,000 women, there is no possibility of making a complaint of pay discrimination. There is no other piece of legislation that is going to address it.

If you accept the notion that a large number of the 243,000 firms that you have cited as your reason for not supporting the amendment are single-person corporations that do not have employees at all, let alone female employees, then what you are using is an argument that is self-defeating for why you should oppose this amendment. How many firms do not have employees? Nobody has cited a figure to us. It might be 50,000, it might be 100,000, it might be 200,000. Nobody is telling us.

What we do know is that those firms employ over 240,000 women. That being the case, we should, under this legislation, allow a woman in that position to make a complaint to the Pay Equity Commission. What are you going to say to a woman who works in a small firm when other people can lay a complaint and she cannot? What will you say to her when she comes forward in your constituency? "Sorry, I did not want to bother small business"? Why is it fair to allow discrimination in a small business firm and not in a large business firm? I do not understand that logic.

Mr. Barlow: If Ms. Gigantes is asking me that question, I think the answer is rather evident. It is far more difficult to compare positions in a smaller firm, because everybody is doing everything in that firm. I used this argument the other day. It is virtually impossible to compare positions within a firm. The person doing the bookkeeping, whether it is a male or female, is not necessarily just doing bookkeeping in that firm. She is going to be performing other job functions, the same as the person out in the shop operating a machine of some sort is going to be doing not only that. They have to move around. The male or female boss of that company has to rely on a team effort in that firm to keep the thing going, not only to do the work that is there before it today but also to be able to produce and increase the volume so that the small firm can become a larger firm and employ more people, both male and female.

It is not a matter of saying that the female in that eight-person concern is going to be discriminated against. I do not think that is the thing at all. I think your argument is totally wrong. Certainly it is wrong if you want to increase employment in this province. Businesses are not going to open, they are not going to want to expand if they are going to have this as a gun to their head: "All right. Once you get a certain size, you are going to have to implement a pay equity plan or be prepared to implement one if you are drawn into defending your position."

I am sorry. I just cannot and have never been able to see this piece of legislation or an act of this sort as an employment creation tool. We were quite prepared back in 1983, when we were the government, to bring in an act that would deal with discrimination under the Employment Standards Act, and that was a far different act than what we see before us today. It would have helped the female in the work force.

Ms. Gigantes: I just point out to Mr. Barlow that the argument he has made is an argument in favour of our amendment, because as soon as you

have a cutoff point for the application of this legislation, it will be in an employer's interest to hold employment below that cutoff point. Correct? Correct. If we have zero as a cutoff point, if we have no cutoff point, then it will not affect an employer one way or the other in terms of the application of this legislation and how the employer may feel about that, whether the employer increases employment in the firm or not.

I think, combined with the whole exemption we have provided for casual on-call labour, this is a huge loophole that can be used by employers to avoid application of this legislation. If you do not see it that way, then you are going to watch it be implemented that way.

Mr. Chairman: I will allow Mr. Baetz perhaps to have the last word on this, but I believe the positions are fairly well established on this number. I am sure we can debate it at some length, but I have a sense from the chair's perspective that we are not going to change any minds, so, Mr. Baetz, if you would wind up your party's debate on it. If the Liberal members have anything to say on it, I will also allow them to speak on it.

# 1040

Mr. Baetz: I will be very brief. Just to get away from the technicalities here of whether it is nine and under or whether they should be excluded or not, frankly I think, as you have noted, there is a mindset here. There is a philosophical difference here between our two parties. Frankly, we do not believe that you can legislate through laws and regulations passed out by big government to control and regulate every human relationship that exists in our society or to permeate every nook and cranny with legislation and say, "Here is the law, here are the regulations and you shall abide by them." In our kind of society, we surely should also allow for some more freedom. Let us assume there is some sense of dignity, some sense of humanity on the part of these small employers that they do not have to be regulated in every sense of the word.

The other thing is this, I frankly think, and I know our party feels this way, that once this legislation has been passed, which is really going to be a landmark in equal pay legislation, there are going to be—in fact, I think there already have been—some rather broad attitudinal changes in our society on equal pay legislation. As a result of this committee's work, I think there has been a growing sensitivity and awareness of the need for some change here and I think it is going to happen, whether or not we are going to regulate right down to every last, single employer.

The other and final thing is, with this new change in attitude, with the new change even in regulations and legislation for the larger firms, these small employers are going to have draw on the same female labour pool as the larger ones do. Now, as things are changing in the larger group, it is certainly going to impact on the thinking in the female labour pool, and gradually people are going to be aware that in fact if you are really very concerned about pay equity, you go to the larger firm, you do not go to smaller firms, and the smaller firms are going to have to come along with it and adapt their personnel policies to the new changes.

I know you disagree with that and you think we should legislate. Every informal relationship and every formal relationship should be legislated by government. We do not believe that. We do not think society should or does operate in that way.

- Ms. Gigantes: It does not operate like that. That is why we need legislation.
- Mr. Chairman: All in favour of the motion placed by Ms. Gigantes? All those opposed?

Motion negatived.

- Mr. Chairman: I would like to deal with the other motions that are in section 2. I have one from Mr. Scott on subsection 2(1).
  - Ms. Caplan: I will read that into the record.
- Mr. Chairman: Ms. Caplan moves that subsection 2(1) of the bill be struck out and the following substituted therefor:
- "(1) This act applies to all employers in the private sector in Ontario who employ 10 or more employees, all employers in the public sector, the employees of employers to whom this act applies and to their bargaining agents, if any."
- Ms. Caplan: The effect of this amendment would include those people who were covered previously in Bill 105, the Ontario public service and the scheduled agencies, and deal effectively with all women in Ontario employed in firms of 10 or more.
- Mr. Chairman: Effectively, it does not change the intent of Bill 154, but it includes the operative clauses from Bill 105. Is there any comment?
- Mr. Barlow: Just briefly, Mr. Chairman, I guess that really covered the point of one of the amendments we were going to make that would have rolled in the public sector. I would just like to make that point. Again, I would reiterate that I have grave reservations on the 10 and under. I feel it should be a higher number. However, knowing the sentiments of the committee, I certainly have no intention of moving an amendment at this point.
- Mr. Chairman: I will call for concurrence on subsection 2(1) as moved by Ms. Caplan on behalf of Mr. Scott. All in favour of that motion? Opposed?
- I will call the vote again. Are we all together? No, I doubt that they are. I think there may be some confusion with respect to the vote, so I will call it again.
- Ms. Gigantes: You have an indication, I think, of the mixed feeling we have in terms of supporting this. We would like to see the public service included in this legislation. We do not like the exclusion for 10 and under.
- Mr. Chairman: I cannot help you. I have a motion before me that I have to deal with.
  - Ms. Gigantes: Take it as read.
- Mr. Barlow: They probably have the best of both worlds, by one voting for and one against.
- Mr. Chairman: Either that or put your hand up only halfway. That might do it. I will call the motion again. All in favour of the government motion? Opposed?

Motion agreed to.

Mr. Chairman: We have a Conservative motion on subsection 2(1). Is it your wish to withdraw that motion now in the light of what just happened?

Mr. Baetz: Yes.

Mr. Chairman: Okay, that motion will not be put. We have an NDP motion. Ms. Gigantes, do you wish to speak to subsection 2(2)? What you have with respect to this is that your party recommends that subsection 2(2) of the bill be voted against.

Ms. Gigantes: That was what you just saw. We like it and we do not like it, as amended.

Mr. Chairman: Then you are withdrawing that?

Ms. Gigantes: Yes. It is not a motion anyway.

Mr. Chairman: To tidy up that entire section, I will call for a vote now on section 2, as amended. All in favour of that motion?

Section 2, as amended, agreed to.

On section 3:

Mr. Chairman: Ms. Gigantes moves that subsection 3(1) of the bill be struck out and the following substituted therefor:

"The purpose of this act is to establish equal pay for work of equal value for all employees by eliminating gender discrimination in compensation and compensation practices."

Ms. Gigantes: You will notice that the main effect of this amendment is to change the expression "pay equity" to the expression "equal pay for work of equal value," and that is our intent. Pay equity is defined within the legislation, and it is defined as being achieved once certain conditions, certain practices, certain mechanisms, are met and put into place.

Equal pay for work of equal value has long been recognized in international legislation, and it means exactly what it says. It does not mean some narrowly defined legislative formula such as we see in this legislation. It means that a person who is occupying a position shall be paid the value of that position through the employer, that the position itself will be assessed in terms of its value to the employer, and that the person who fills that position shall have a right to make a complaint if the position is not being paid according to the value in the establishment.

We consider this a very important amendment. It is an amendment which would fulfil our commitment to international labour agreements that Canada and Ontario have already ratified. You will find in international agreements and covenants that we have signed no reference to such a notion as pay equity, and while there has been substitution of one phrase for the other over the last two years, pay equity, if it is to have real meaning, should mean nothing less than equal pay for work of equal value and it should mean that anybody who makes a complaint to the Pay Equity Commission will have that complaint treated in the end as a question of whether the position is being paid what it is worth to the employer.

1050

If we do not make such an amendment, we have severely limited the application of this legislation, and it means that a complaint to the commission could not be upheld if it were a simple case of equal pay for work of equal value. The complaint could be upheld only if, somehow, the employer had infringed one of the formulistic kinds of concepts that we have laid out in this legislation.

Mr. Chairman, you will note that in dealing with Bill 105, which addressed equal pay in the public service, a majority of this committee agreed that the question before us in dealing with this legislation should be equal pay for work of equal value and not some formula or mechanism laid out in the bill which, if called pay equity and if achieved, would satisfy the goal we are seeking here.

Mr. Charlton: My colleague has laid out the basic and substantive reasons this amendment has been moved. There is an additional reason we have moved this amendment, and that is to assist the government party in supporting the Premier (Mr. Peterson) in living up to the commitment he signed with this party a year ago last June, where he committed himself to providing equal pay for work of equal value in this province.

Mr. Chairman: Having been told that, Mr. Ward, did you wish to respond?

Mr. Ward: Not at any length. Given the number of votes we have taken on this bill, I think we have firmly established at this point the process and the system that is being put in place by the government, I believe with the support of all three parties in the Legislature. I would refer members of the committee back to the preamble of the bill to recognize what we have set out to do in a very proactive fashion. I think what we will achieve is legislation that does redress gender discrimination in compensation practices directed towards female employees.

Quite candidly, the concept that is being put forward by the third party right now is a different concept to the concept of pay equity as contemplated by this act. It does not come as any surprise. It is not a new notion that the concept is different and I do not understand why at this point, in terms of section 3, you would want to interject that terminology when you know full well that, given where we are in our determination of what form this legislation is going to take, it does not relate to the amendment that you have put forward.

Ms. Gigantes: This legislation has limitations. The committee is well aware of our viewpoint on the limitations of the legislation. What we are saying is that in the end, whatever the limitations of the legislation in terms of all the tests it sets up before women can complain that they are not being equally paid for doing work of equal value in this province, there should be, in the face of all those limitations, the possibility of a woman or a group of women appearing before the Pay Equity Commission and saying: "Whatever the limitations of the legislation, I want you to take a look at the case in this work place. I want you, Pay Equity Commission, to make a judgement about whether there is equal pay for work of equal value going on in this work place." Unless we change the language in this section, that will not be possible. All the commission will be able to look at is whether the mechanisms of the bill permit the woman to make a complaint. If the mechanisms of the bill do not, then she can go and dream about a fairer kind of system because the problem is not going to get addressed under this legislation.

We have a list of exemptions and exceptions. We have a list of barriers. Large numbers of women, hundreds of thousands of women, will not have proactivity and will not have equal pay plans in their work places. In the end, we have to give to the commission the right to look at cases where a person comes forward and says: "Look, it does not matter what the clauses of this bill say. I want you to take a look at this work situation and tell me whether I and my colleagues are getting equal pay for work of equal value." That is the overriding principle that has been agreed to at the national level and ratified at the provincial level. We are not living up to long-standing international covenants unless we permit a woman or group or women to make that final appeal to the commission.

If the government is so convinced that the legislation before us is adequate, then why should it worry about changing the phrase "pay equity" as opposed to "equal pay for work of equal value"? If no women are going to be barred from getting equal pay for work of equal value through the mechanisms of this legislation, then surely the commission will not be overwhelmed with final item complaints from women that the legislation has not addressed their work situations.

You cannot have it both ways. You cannot say this legislation does the job and then say, "The commission shall not hear anything that relates to the basic principle of equal pay for work of equal value." If you argue those two cases at once, what you are saying is, "We expect a lot of women are not going to get equal pay for work of equal value when this bill becomes law."

We expect that all the barriers and exemptions in this legislation will prevent women from making a claim and having that claim satisfied under the legislation and that the situation is one of unequal pay for work of equal value. You cannot have it both ways. If you feel women are going to be adequately covered, you should not be afraid of allowing women to go before the commission to ask for equal pay for work of equal value.

Mr. Chairman: I will call the amendment proposed by Ms. Gigantes. The amendment is to subsection 3(1), and I believe you have it before you. There are two sections to section 3. We are voting only on subsection 3(1) and not subsection 3(2) at this point.

Motion negatived.

Mr. Chairman: We have a government amendment proposed on subsection 3(2). It is a minor amendment. Ms. Caplan, perhaps you would like to go ahead at this point.

Ms. Gigantes: On a point of order, Mr. Chairman: We had put in an amendment to subsection 3(2), and I wonder if the chair and the committee would accept that we renumber that amendment to be subsection 3(1a).

# 1100

Mr. Chairman: Let me clear up a couple of procedural matters. The parliamentary assistant is indicating that we did not vote on subsection 3(1), and I did not do that because I would be dealing with subsections 3(1) and 3(2) as part of an amended package in that section. I can do it individually, but I was going to do it, to save time, when we have the package amended. In my judgement, if we call subsection 3(1a) now as proposed by Ms. Gigantes, we are in effect opening up subsection 3(1) again. I will need the unanimous concurrence of the committee, will I not?

Clerk of the Committee: No. It would be a new subsection.

Mr. Chairman: So it is not opening that subsection again.

 $\underline{\text{Clerk of the Committee}}$ : It would mean that this would be renumbered again.

Mr. Chairman: Well, let us get the numbering straight.

 $\underline{\text{Ms. Gigantes:}}$  It really does not matter. We could call it subsection 3(3).

Mr. Chairman: If the interpretation is that we are not reopening subsection 1, then we will take the NDP amendment to subsection 3(2) and renumber it subsection 3(1a). You will want to deal with that now so we will keep them in order and Ms. Caplan, I would ask you to stand down for a moment, if you would.

Ms. Gigantes: It makes no difference to me or to my party whether we call it subsection 3(la) or subsection 3(3). The only problem with subsection 3(2) as it is, is that in essence we have already accepted the question of male and female job classes as a test of whether there is gender discrimination in compensation, so I did not wish to reopen that section. If you would prefer to deal with our amendment as subsection 3(3), I would be quite happy to do so.

Mr. Chairman: According to legislative counsel, who is advising me on this, it is in order that subsection la will be adequate to your requirements; so let us proceed on the basis of subsection la.

Ms. Gigantes moves that subsection 3(la) be added to the bill:

"No employer shall establish or maintain gender-based compensation practices or establish or maintain gender-based differences in compensation."

Ms. Gigantes: This is at the heart of the bill. I would like to see it in this section because we are laying out what is the purpose of this act, and we are laying out the final test on which women in this province can make appeal to the Pay Equity Commission of Ontario. It is essential that we have a clause such as this one that says old and new employers shall rid themselves of gender-based compensation practices and in terms of the gender-based differences in the way compensation is structured. It is at the heart of this legislation. I think it should be in this section and it should be worded as clearly as we can make it, which is our attempt in this amendment.

Mr. Ward: I believe the amendment that is being proposed as subsection  $\mathfrak{Z}(1a)$  is contrary to the vote that has just taken place on subsection  $\mathfrak{Z}(1)$  in terms of the intent or terminology and the necessity to make a statement. With regard to the purpose, I refer the committee to subsection  $\mathfrak{G}(1)$ , which in fact is the section within the government bill that basically reiterates the purpose as it relates to the legislation.

Ms. Gigantes: We are moving this amendment to this section because we feel that in stating the purpose of the bill, it should be stated up front that one of the purposes is to ensure that employers do not establish or maintain gender-based compensation practices or establish or maintain gender-based differences in compensation. We do not deal with the question of pay equity. We do not deal with the question of 60 per cent female job classes

or 70 per cent male job classes. We do not deal with any of those. It is a statement of purpose, and it is put in the sense that it flows out of the purpose and should be an overall principle in terms of this bill.

Mr. Ward: Again, I remind Ms. Gigantes that the statement of purpose is part of the preamble of the bill. It is clearly enunciated there. The purpose is reiterated under subsection 6(1). If you want to keep throwing in the arguments with regard to the gender predominance and all the other issues you seem content to reiterate and reiterate, I cannot change the fundamental nature of your position, which is that you are not particularly interested in a proactive kind of process. The fact remains that is a matter that has already been decided by this committee, and I do not see what purpose is served in continuing those arguments and that debate.

Ms. Gigantes: I will just briefly reject the notion that there is any linkage between proactivity and the creation of equal pay plans and the statement the parliamentary assistant has just made. What we are saying here has nothing to do with whether the legislation is proactive.

Mr. Ward: By the same token, I completely reject your coverage argument under that section and I will continue to do so, because quite frankly, I find your position to be more exclusionary, far and away, than the gender-predominance clause. You know that as well as I do.

Ms. Gigantes: The parliamentary assistant has mixed in a whole bunch of notions here and claims I know something about them--

Mr. Ward: I never claimed that.

Ms. Gigantes: --when my understanding of gobbledegook has never been great. I do not think there is much point to our having further debate about this.

Mr. Ward: I do not think there is.

Ms. Gigantes: We simply offered what we considered to be a helpful amendment. It does not exclude anything; it does not refer to the question of pay equity as opposed to equal pay. All it says is that employers shall not be establishing or maintaining gender-based discrimination in pay. If you cannot live with that, I do not know why not.

Ms. Caplan: That is what the whole bill is about.

Mr. Chairman: I have had some requests to proceed with the vote on the amendment. I believe we have had sufficient debate on it. Unless there is anything urgent and pressing you wish to add, I will call the vote, which is the NDP amendment, subsection 3(la).

Motion negatived.

Mr. Chairman: I will go back now to subsection 3(2).

Ms. Caplan moves that subsection 3(2) of the bill be amended by striking out "relative" in the fourth line and in the fifth line.

Can you quickly tell us what is the intent of that?

Ms. Caplan: This is for clarification. It is technical.

Mr. Chairman: Are there any questions with respect to the minor amendment being proposed?

Motion agreed to.

Mr. Chairman: Will you hold it for a second? I will get back to you in just a moment.

Ms. Gigantes: Yes.

Mr. Chairman: I would like to deal with section 3 first, but I do not have that cleared up yet.

I have a New Democratic Party amendment which I believe is numbered 19 on your pages as well; it deals with section 10 of the Human Rights Code. Further, I have a government amendment regarding subsection 4(2), which also deals with compliance with the Human Rights Code. Those two may be complementary. Since the New Democratic Party has seen fit to put this in section 3, I will allow it to go first, because the government has not put it in until section 4.

Ms. Gigantes: We also have an amendment to section 4. On this subject, which has to do with handicapped employees, I believe it might be helpful to the committee if we dealt with the discussion of all the amendments at the same time.

Mr. Chairman: That is what I am getting at. I think there would be some value in that.

Ms. Gigantes: We might well decide we prefer the government's approach if we could hear the argument the government might like to put on the subject. I can certainly speak to the two amendments we have proposed.

#### 1110

Mr. Chairman: Do you have any difficulty, irrespective at the moment of whether the amendment carries, with moving it to subsection 4(2)? The government would prefer it in that section.

Ms. Gigantes: That is fine, as long as we decide--we have two amendments, and we have purposely entered two. Where is your second one?

Mr. Ward: We have one under subsection 1(6) as well, and because we are not dealing with it-we started at 2-we will have it in 2.

Ms. Gigantes: Perhaps we should deal with all of them at once, should we?

Mr. Chairman: I think so.

Ms. Gigantes: Our view was that there needed to be two ways of addressing the question in the legislation, and apparently the government has the same view.

Mr. Ward: I think we could pick it up first under 4(2), if that is agreeable, and then we have a section under 1(6), which I guess would come--how did we ever start at 2 if we were going chronologically?

Ms. Gigantes: We wanted the definition--

Mr. Ward: Obviously, we would come back to section 1, because that is definitions.

 $\underline{\text{Ms. Gigantes:}}$  I am agreeable to any method of discussion as long as that does not preclude our placing an amendment to section 3 if that is the result of our view of the discussion.

Mr. Chairman: How would it be if the chair were to allow a little free-wheeling discussion around those amendments without at this point determining the specific section, to allow the maximum amount of freedom of debate? When we get to the point—and we will all know when we arrive at that point—where we want to start making specific amendments, then I will recognize them from the floor in some sort of reasonable order.

We will discuss the section as it relates to the Human Rights Code, section 10, in a general sense, and then we will get to the specific amendments.

Ms. Caplan: It is our position, and I think the parliamentary assistant can expand on it, that the amendments to subsections 1(6) and 4(2) respond to the concerns that were raised by the handicapped association that made representation to the committee and that in fact they make sure there is no penalty in relation to disabled workers. That is the purpose of the two amendments, and I think it is dealt with very clearly in the way the amendments have been brought forward.

Mr. Ward: In adding to section 1, the definitions section, what we were trying to do was clearly enunciate at the outset that you could not use the issue to create a separate job class and escape the coverage of the bill. That is why we put that up front. Second, I think our subsection 4(2) amendment runs fairly consistently with the position that was put forward by the delegation.

Ms. Gigantes: I do not know that either set of amendments really addresses the concerns, as I understood them, of the group that came forward on behalf of handicapped employees. Let me raise the question in a straightforward manner.

My understanding was that their concerns arose not only about the problem of how costs might be treated, and that is the way our amendment 3(3) has addressed the question, and not only the question you have addressed, which is the creation of a new job class, but also whether in a situation where handicapped employee A has been accommodated by the trading off of some job duties with another position, position D, that employee would end up being treated as if the position occupied were position B. What you have suggested is that it might be considered by the employer to be position C, which is a whole new class.

Mr. Ward: If you do not mind, Ms. Gigantes, I think I will let Ms. Marlatt respond on this, because the direction was given to try to accommodate the concern that was put forward and the director has had conversation and dialogue with the deputants.

Ms. Gigantes: Yes.

Ms. Marlatt: In subsection 1(6), what we are trying to do is to say you cannot set the disabled in a separate class on the basis that you had to

make some accommodation for them in the job. In subsection 1(6), we are saying they have to be put in the same job class as other employees doing substantially the same work.

Then the companion piece, in subsection 4(2), is that you cannot lower the value of that job, both for the disabled and the nondisabled in that job class, because you have made accommodation for the disabled. We are trying to address both keeping them in the class with the nondisabled and keeping the value of that class, once established, from being given a lower value because accommodation has had to be made for some of the members of the class.

I think that, plus making recognition of the Human Rights Code in these two, was another thing that was important to them, that someone reading this bill understand that the Human Rights Code also prevails. I think the fact that any of the amendments raise the code and the accommodation that is provided in the code addresses their third issue, which was just raising the consciousness of employers that the two pieces of legislation should be looked at together.

Ms. Gigantes: Could you give us an example of what you are talking about when you talk about the creation of a new job class? I think that would be helpful.

Ms. Marlatt: I think they were concerned that if people in a job class were doing a series of tasks, A through E, if the disabled person could not do all of E, that would be sufficient that a new job class would be created. What the amendment to subsection 1(6) is saying is that if you had to do a minor change in one of the duties, that does not justify setting up an entirely new class of job.

Ms. Gigantes: What if you had to do a minor accommodation in three of the duties? That can happen.

Ms. Marlatt: I think it is similar, how many of the duties that you have to apply. We are just saying the fact that accommodation has been made; we are not saying that three out of six is enough to make a separate job class and one out of six is not. We are not really putting a definition on how little or how much, so that there is a flexibility to be able to make a bit of accommodation on all of them.

Ms. Gigantes: One of the concerns, as I understood it, was that if a person is hired to do a clerk 3 position and there are two pieces of the clerk 3 position that the handicapped person cannot carry out but the handicapped person has assumed different responsibilities, perhaps swapping responsibilities with another person who may be in a different job class, the handicapped person might then find the position he or she occupies being called equivalent to the second job class.

What you have dealt with in this amendment is the creation of a new job class, which is important, but I am wondering whether there is not also the difficulty that might be created where the employer said, "Actually, the person was hired as a clerk 3, but because we had to make the accommodation in the work place and in work duties, what we have got is a clerk 2."

Ms. Herman: I think the combination of subsections 1(6) and 4(2) says that the fact that accommodation has been made will not alter the job class that the person is in and will not lower the value when the valuation of that job class is done. It is a double-barrelled thing: (1) in evaluating the

value of the job class, the fact that accommodation has been made should not be taken into consideration; and (2) when the accommodation is made, the person is not changing job classes, creating a new job class or being switched into another job class. She stays in that job class where the accommodation is made.

Ms. Gigantes: I think your amendments cover the creation of a new job class, but show me the phrase that says "being switched into another job class."

Ms. Marlatt: "A position shall not be assigned to a job class different than that of other positions in the same establishment that have similar duties, responsibilities...." From there, the words are the words that define a job class; so it basically says "shall not be assigned to a job class different than the other position." Basically, if you are hired as a clerk 3, you should not be shifted into clerk 3 1/2 or clerk 4 or clerk 2. I think the different job class takes into consideration the existing one, which might be lower, or the creation of a new one.

# 1120

Interjection: Do you feel satisfied with that?

Ms. Gigantes: I feel satisfied with that, and on that basis, I would be prepared to say we could support the government's amendments as opposed to ours. It is just a different way of dealing with the same subject. Actually, I tend to prefer the government wording.

Mr. Chairman: Will you withdraw your amendments on sections 3 and 4?

 $\underline{\text{Ms. Gigantes}}$ : Yes, I will. That affects 19 and 20 in our package of amendments.

Mr. Chairman: That is, pages numbered 19 and 20.

Are there any further comments you wish to make on that? Since there are no other motions in section 3, I guess we can move now to completion of it. Then we will deal with the government's amendments on section 4.

I hope you understand what I am doing. We were dealing with the amendments to section 3. Since those amendments have now been withdrawn, I will ask for your concurrence on section 3, as amended.

Section 3, as amended, agreed to.

On section 4:

Mr. Chairman: When Ms. Caplan has had a moment, I will let her move subsection 4(2). That will effectively carry out the intent of what Ms. Gigantes wanted.

Ms. Caplan moves that section 4 of the bill be amended by adding thereto the following subsection:

"(2) The fact that an employee's needs have been accommodated for the purpose of complying with the Human Rights Code, 1981 shall not be considered in determining the value of work performed."

Are there any questions or comments?

Motion agreed to.

Section 4, as amended, agreed to.

Ms. Caplan: Are you going to take a vote on all of section 3? You did not do that.

Mr. Chairman: I did, and that carried. At the urging of some members of the committee, I will now take a break till about 11:30, about five or six minutes.

The committee recessed at 11:22 a.m.

## 1140

On section 5:

Mr. Chairman: For purposes of information to the committee, perhaps Ms. Gigantes would like to give a general overview of what her party has done with the earlier tabled amendments and an overview of those she wishes to withdraw and substitute new ones for on section 5. Could you make some comment about that so we are all reading from the same hymnal, and then we can go from there.

Ms. Gigantes: Circulated this morning was a new package of NDP amendments which begins with—I am afraid there is no page number, but it says subsection 5(2a). I would ask committee members now to disregard page 21 of the original package of NDP amendments because in effect the purpose of that amendment was already decided in a negative fashion when we agreed to the question of female and male job classes. Would you eliminate page 21 in the original package, and the amendments which we will wish to raise around section 5 begin in the package you received this morning.

Could I also suggest that when we move to this section—apart from the government amendment to subsection 5(2), which is a question of translation—we have a general discussion of section 5, because we have questions we would like to raise before we get into dealing with the government amendment or with our amendments, for that matter.

Mr. Chairman: It is a large section, and that procedure worked out relatively well when we had some complications on one of the previous sections. With the agreement of the committee, let us allow for some freedom of debate before we get down to specific amendments, and then we can try to move on them. We seem to make time somewhat more quickly when we do it that way. Go ahead, Ms. Gigantes.

Ms. Gigantes: Do you want to deal with the government amendment on subsection 5(2) first? I am quite happy to do that to get it out of the way.

Ms. Caplan: Yes.

Mr. Chairman: Ms. Caplan indicates that she can deal with that now because it is a technical amendment that probably will not be too controversial; then we will deal with the rest of section 5.

Ms. Caplan moves that the French version of subsection 5(2) of the bill be amended by striking out "ceux" in the last line and inserting in lieu thereof "celui."

Motion agreed to.

Ms. Caplan: The next one is the same in English under subsection 5(3). Do you want to do that now or later?

Mr. Chairman: Okay. Subsection 5(3) is the same thing.

Ms. Gigantes: No, it is not.

Ms. Caplan: It is not? Okay.

Ms. Gigantes: I think we should leave subsection 5(3) until after we have had a general discussion of my amendments.

Mr. Chairman: All right. Back to Ms. Gigantes on section 5.

Ms. Gigantes: If you would recognize Mr. Charlton, we have questions we would like to lay out by way of setting up an example on the flip chart and get an explanation from the government of what the government amendments to section 5 mean in terms of this example we are concerned about.

Mr. Charlton: Our basic concerns here are around the amendments to subsections 5(6) to 5(10) and the use of job groups as a job class. What we want to understand basically is how that will work in the context of what is being set out here.

We have a female job group with seven levels or classes. We have a male job group with three levels or classes. There is a \$5,000 spread from bottom to top in the female group and a \$3,000 spread from bottom to top in the male group.

The amendment to subsection 5(9) says: "Where a group of jobs is being treated as a female job class, the job rate of the individual job class within the group that has the greatest number of employees is the job rate for the group."

That is this level in the female job group. When you do the comparison based on the criteria--skill, effort, responsibility and working conditions--it compares to the middle of the male group. If we use the criteria to compare the first step in the female group, we find that in fact it is comparable to the first step in the male group and that we would also have a comparison here in terms of the criteria.

What we want to understand under these amendments is what will happen where this is the comparison that is made. Then, presumably from the explanations we had last week, down and up from there the same dollar values would be applied. So this group at the bottom, which is comparable to this group, is still going to be below that group—or that is how it would appear to us—and this group here likely will still be below this group.

The total spread in the job group, even though it is a comparable job group, with the exception of the seventh level, which is, by comparison of the criteria, probably slightly above this top level here, is still going to be much larger than in the comparable male group.

Those are the kinds of things we are concerned about in the amendments. How, from your perspective, is this going to work?

Ms. Marlatt: If you choose to take the jobs as a group, and number 3 is the most populous and the equal value comparison is to number 2, if you are treating them as a group and you had to give the job rate to female number 3, a \$2-per-hour increase, then you would give each of the other jobs a minimum of a \$2-per-hour increase, going up and going down in your series; so you would get a different distribution than if you took 1, 3 and 6 from the female group and made individual comparisons. You would treat them all as a group of jobs, 1 through 7, if they were covered by a collective agreement, if you negotiated doing that with the union. If they were not covered by a union, the employer could make that choice and then that is subject to the review of a review officer and, subsequently, the appeals tribunal.

But you are right; you either treat them as a group of jobs, I through 7, and make the comparison, as you mentioned, or you treat them individually. If you treat them individually and make those comparisons, then 1, 3 and 6 would each have to meet the female gender-predominance test. If you treat them as a group of jobs, I through 7, then the entire group would have to make the test for female predominance, given the flexibility that it can be subject to negotiation and subject to review as well. The male 2 that is compared to, or male 1, 2 and 3, would each have to meet the test of being male-predominated.

# 1150

Ms. Gigantes: The way you are explaining this is as if the problem one were trying to overcome was the question of sexual predominance in each job group or within each level of job group. Is that the purpose?

Ms. Marlatt: The reason the amendment is suggested, taking jobs in the A group of 1 through 7, is because there have been some differences in pay, 1 through 7, between each job class in the group that has either been bargained or established. If you wanted to maintain that, you would treat them all in unison. The possibility is if you do treat them individually, and it is still an option under the bill, you could have the possibility of someone who is, say, number 3 or 4--the problem is you are squeezing out the female 2 level.

You can also get an inversion where, if you did not move 7 and you did move 6, you could have 7, if 7 is sort of a supervisor or a senior in the progression, possibly earning less than the number 6. You could get some compression between the supervisor or the senior position and a more junior position. That would be the reason for trying to treat a group of jobs, 1 through 7, in some sort of unison pattern, rather than taking one out and another out and another out, although both options are still available under the bill.

Mr. Charlton: In a situation where you have something like this, and there is no bargaining agent and the employer decides to deal with the job group as a job class, what option do the employees have? Can they complain?

Ms. Marlatt: Yes.

Mr. Charlton: Is it subject to complaint?

Ms. Marlatt: If this were an employer who was preparing a plan, you could complain to the employer once the plan was posted or else take the other proceedings to the commission and go through the review officer stage. If you are not happy at that stage, then go on to the full appeals tribunal. It is a part of the plan that would be appealable.

Ms. Gigantes: I think you have already said this in a different way. If you would bear with me, essentially what we would be dealing with in the class 7 of the female group might be a supervisory level person. There might be no such component in the male job group, as it is being proposed under section 5. Particularly at the top and at the bottom ranges of the female job class, you would be dealing with increases which were not in any way related to the comparisons between the job levels, which were in fact comparable to the job classes or levels within this group, so that both ends of that group would lose out because what you are talking about as a comparison and in terms of rates is going to depend on the rate of female 3 compared to the rate of male 2.

Ms. Marlatt: That is right. The comparison for 1 and 6 may be an entirely different male series of jobs as well.

Ms. Gigantes: That is right.

Ms. Marlatt: The male 1 through 3 would not be treated as a group of jobs.

Ms. Gigantes: We have an amendment which I would like to ask the government representative to take a look at. We have numbered it, in our new package this morning, subsection 5(2a). It is an attempt at least to deal with what is involved in this kind of comparison. I would like to get government comment on what is being proposed in subsection 5(2a). I do not know if you have had time to take a look at it yet.

Ms. Marlatt: When I first saw this amendment, I thought that if you had the female job 3 and it had five steps from minimum to maximum for just female 3, if you compared it to male 2 and male 2 had two steps, and the bill says that you compare job rates, you would be doing the highest in the female-

Ms. Gigantes: It does mean that, but it would have application to the amendment to subsection 5(9), because under the government amendments to section 5, what you are doing is treating a number of job classes as one job class. In other words, what I am suggesting is that--

Ms. Marlatt: Not only would female 3 have to be collapsed to 2 or whatever number of maximum-to-minimum positions as the male 2, but also the female series or group of jobs 1 to 7 would have to be reduced to 1 to 3.

Ms. Herman: What happens to 7?

Ms. Gigantes: Presumably, 7 would be in that, depending on how the job class was redefined under section 5.

Ms. Herman: But the comparison you have done is between 6 and 3.

Ms. Gigantes: Yes.

Ms. Herman: Then what would happen under this amendment to female class  $\overline{7}$ ?

Ms. Gigantes: That would be a separate battle. That would be a battle that one would argue out, in either an unorganized or an organized work place with whatever method was open. If I were a member of female 7, I sure would not want to be left in with that group for purposes of comparison if there were a more comparable position which was male-dominated.

Ms. Marlatt: But would this amendment not force the 1-to-7 into a 1-to-3?

Ms. Gigantes: It would depend on how you defined it. There is nothing in the government amendments on section 5 that suggests to me that if all these jobs are called "clerks," 7 would necessarily be included in the job class you created out of 1 to 6.

Am I right? The amendments suggest you could make two groups of that; you could make three groups out of it. It does not say how many groups you could make. That is open to negotiation if there is a bargaining unit and then open to complaint if there are problems with it.

 $\underline{\text{Ms. Herman:}}$  But assuming an employer's usual way of classification is 1 to 7 and the employer chooses to continue with that classification, because that is the classification he or she uses for everything--

Ms. Gigantes: If I were in 7, I would say: "I really do not belong to that job class. For purposes of the application of Bill 154, the employer had better compare me and the value of the position I occupy in a different way," if it is clearly different.

 $\underline{\text{Mr. Charlton}}$ : This deals with the question of whether you are going to do  $\underline{\text{only}}$  one comparison on that group or whether you are going to do more. That is why we are concerned about that aspect of it. If you did comparisons at the top and the bottom as well as the middle, that would clearly show you that 7 belongs above.

Ms. Herman: There may be no comparison for 7.

Mr. Charlton: There may be; just in relative terms, if the comparison is at 6 and, under the criteria, the duties of 7 are different from those of 6, that is going to become clear. If you do only the one comparison in the middle, none of that will be clear. The person at the bottom is never going to get up to the bottom male job class, and the person at the top may or may not be benefited to the extent she should be benefited by the comparison in the middle.

Ms. Marlatt: The issue from 1 to 7 is that these jobs would have to bear a relationship to each other in that the nature of the work was the same and they were in a hierarchy.

You might argue for using this kind of approach, a group of jobs, if you were concerned that you have a comparison from 3 to 2 in your organization. You do not have a comparison. There is no male job that could be comparable to 1 and perhaps also to 7. If you had that many female jobs, it would be beneficial if you could find one for which there is a comparable in the group of jobs. Because of the subsection 8(3) amendment about the dollar adjustment, you have some means of actually tagging on to that change and finding some comparables for it.

If you did not think that would be effective, then either you would go to the commissioner or you would bargain against such a comparison.

# 1200

Ms. Gigantes: Are you suggesting that the purpose of the government amendment is really to find comparables? We are telling you that we believe

there are situations--I think I can name one for you in the Ottawa area--where you have clerical workers in groups 1 to 7 who are probably comparable to lab technicians or whatever in groups 1 to 3. Furthermore, it takes you many more years to go from level 1 to 5 in the female job in terms of seniority than it takes to go from level 1 to 3 in the male job.

Furthermore, the top class of the female group may never be filled or it may be filled once every two years. It may be a seniority position, a supervisory position or what is called a merit position but, in any case, under these amendments, it would not be looked at as a separate entity for comparison to some other job class.

I am concerned that we are doing justice to no one except the group 3 females who are being directly compared to their closest comparable, which is the job class 2 males, when we do this grouping. I am still trying to find out the purpose.

Are you telling us the reason you bring the amendment is to try to do justice for group 1, or is it to do justice for group 7? If it is, I do not see it. If it is to enable the finding of comparables, I do not see how it really does that.

Ms. Marlatt: I would just like to clarify one thing. When you talked about seniority, merit and so on, within each of the groups 1 through 7, for female 1, female 2 and so on up the range there is a range of salary there from maximum to minimum, and you may go through the F-l category on the basis of seniority or merit.

Ms. Gigantes: You may up to groups 4 or 5. When you say seniority or merit, I do not know about that.

Ms. Marlatt: In my mind, I would have thought that you moved from 1 to 2, 2 to 3 and 3 to 4 as being different levels of job class with greater responsibility. You probably move through those on a promotional or a competition type of progression, whereas within the one you move through on seniority or merit.

Ms. Gigantes: Not necessarily.

Mr. Charlton: Again, that is the problem because that is not always true. In some cases that is true, in other cases it is not true. That is why we see it as a potential problem.

Ms. Gigantes: We had employers come before us and tell us that in this kind of situation—it was the same kind of employer as the one I am thinking of, which is a university employer—once you get past group 5, you are really dealing with merit pay. That is what they told us.

They said you cannot make comparisons once you get past group 5 because you are not comparing the same kind of thing, either because it is merit or because it becomes a supervisory role at a certain level that is not comparable to male groups.

Mr. Ward: I think Ms. Marlatt has said all that can be said in terms of trying to explain the whole job classification thing, but I look at your amendment in terms of your specific example--I do not want to seize it out of context so correct me if I am wrong--that supposes group 7 is not appropriate in terms of its classification; the fact that it is inappropriately grouped in

that category, using the example you gave of the clerk categorization in with a lab technician.

First, it begs the question of how it got grouped in there inappropriately. Second, when you are compressing the number of levels—I understand what you are trying to do but—is there not every bit as much of a potential for a downside to the elimination of that from the class as well?

Throughout the bill we have tried to encourage comparables in every instance. We have to seek a comparable.

Ms. Gigantes: Except this one.

Mr. Ward: No. I think that is what we have tried to do here as well. By compressing them, it would seem to me that has potential for removing the potentiality for comparables.

Ms. Gigantes: No, I think not. I think the question of who is in the job class is a totally separate question. It is under your amendment to section 5. You can decide an employer and a bargaining agent or an employer and the employees, however the employees are said to agree to it.

The employer can simply say, "For this purpose we are going to call female 1 to 5 one job class, even though within each level there are going to be job ranges and perhaps seniority ranges."

That is a separate question. I will tell you that no employer is going to do it. Actually, an employer might, because an employer might very well get away with less cost in terms of equal pay adjustments if the employer has to take into account only the pay rate difference between female 3 and male 2 and can apply that to female 5 and female 1, when in fact a direct comparison between 1 and 1 might produce a much greater pay gap. It is quite likely to.

Mr. Charlton: Not only do your amendments, as we understand them, not do what Ms. Gigantes's amendment would do, which is to compress the number of levels in there, but also, if we have done the direct comparisons between groups 1 and 1, 3 and 2 and 6 and 3, your amendments do not even compress the total wage gap, the \$4,000, \$4,500 or whatever is the gap from groups 1 to 6, to the \$3,000 that the comparable males have.

Ms. Gigantes: I wonder if this is something that the government would like to look at over the noon break. We have a real problem around the amendments to subsections 5(6) through 5(10). Putting it kindly, we do not see how they are going to be of benefit.

I do not know that our amendments really solve the problem. I do not think they do solve the problem.

Mr. Ward: We did not set out to interfere in what has been established. However, I think it is fair to say that we are talking about what is a very formalized system of job categorization that more often than not would involve--I hate to generalize--the collective bargaining process in many instances. I do not say that as a carte blanche either.

Ms. Gigantes: No.

Mr. Ward: I understand that. I guess we did not really set out to eliminate all of that activity and everything that had gone into it. I am just

wondering whether we should stand it down for further explanation, but I have to say from the outset that it was not our intent to dismantle the system of job classifications, providing the whole business of making comparables did not undermine the compensation of women.

Ms. Gigantes: I understand that, but I do not quite understand what is the purpose of this. If, in fact, the women employed in group I would do better without this amendment, then why have it?

If the women employed in groups 1 through 6 would do at least as well or better without this amendment, then why this amendment? Are you worried about the predominantly female or predominantly male? Are you looking for getting over that test? What is it that has inspired this amendment?

As I read the legislation without it, what any woman in groups 1 through 7 would be free to do would be to approach the employer, perhaps through the bargaining agent, and say, "Look, the best comparable for the position I work in is this one over here," without having to have everything depend on groups 3 and 2 and the job rates attached to those.

## 1210

Ms. Herman: You cannot tell whether the women in 1 and 6 would do better or worse, because you do not know the differentials between steps 1, 2 and 3 in the male class as compared to the differentials between 1 and 7 in the female class. Without having actual figures on each of those levels, you cannot say whether the women would do better or worse.

Ms. Gigantes: That is what I am questioning.

Mr. Charlton: The point we are making is that it can go either way.

Ms. Marlatt: It can go either way.

Ms. Gigantes: It can go either way. Right now, under the legislation without this amendment, it is assumed that women have a right to ask for the closest comparable.

Mr. Charlton: The other problem we see is that even though the complaint mechanism is there, even where there is a bargaining agent, what you have is the largest number in 3. Those who get the shaft, if they go to a group and get less because they go to a group, do not necessarily have the votes in the bargaining unit to make themselves heard, even among the women, because they happen to be the smallest group and are not making a comparison for themselves.

Mr. Ward: Perhaps what we will do is accept your suggestion to stand this down until after lunch. I do not want to say that as any indication that we are necessarily convinced we have a problem, but obviously I have not done a good enough job in terms of explaining the rationale of that. We will come back after lunch.

Ms. Gigantes: I welcome that. Thank you. That being the case, perhaps we should leave all the amendments we have tabled--and the government does not have any further amendments; I do not think the Conservatives have any--until we get into that discussion again after lunch. That is on section 5.

On section 6:

Mr. Chairman: Yes. We can perhaps move to section 6, if you like.

There is a New Democratic Party amendment on page 22, subsection 6(1). Do you feel comfortable in moving that now?

Ms. Gigantes: I would be very comfortable.

Mr. Chairman: Ms. Gigantes moves that section 6 of the bill be amended by adding thereto the following subsection:

"(3) No employer shall change work schedules or change the ratio of women to men in a job class so as to avoid the requirements of this act."

Would you like to speak to it?

Ms. Gigantes: I should say at the outset this does not mean that employers cannot change work scheudules; it does not mean that employers cannot change the ratio of women to men in a job class. We obviously are not looking for that.

In section 6, which is a key to the ultimate determination of pay equity within the framework of this legislation, we are saying we want to see it set out clearly that the employer manipulation of those ratios, which we have established as a test for job comparability in the evaluation of equal pay—pay equity, forgive me. I keep saying "equal pay." I should remember we are talking now only about pay equity. That test shall not be one which employers elude by manipulating the number of males or females in a job class for the purpose of avoiding the application of the legislation. Further, the question of work schedules is very significant in terms of the exemptions provided that relate to part-time work as opposed to casual on-call work and which have been accepted, unfortunately, by this committee.

As far as this committee is concerned, at least in its majority, it is possible that employers shall have the option now of changing people who might have qualified to be covered by this plan or to be grouped so as to have the legislation applied to their job classes. He or she may be able to avoid having part-time workers included in the mechanisms of this legislation by reassinging part-time work to casual on-call work.

The subsection we are proposing to add to section 6 says the employer shall not engage in these practices so as to avoid the requirements of this act. It does not say the employer shall not change ratios; it does not say employers shall not change work schedules. It says the employer shall not do so in order to avoid the requirements of this act. The onus would then be on an employee or a group of employees to make a complaint to the commission that the employer had attempted to avoid the application of this legislation by changing work schedules or manipulating job classes.

Mr. Chairman: Before we get into discussion on section 6, could we clarify whether you are withdrawing subsection 6(1) and subsection 6(2). What is your intention with respect to those other two amendments?

Ms. Gigantes: We will be moving those.

Mr. Chairman: Okay, so you are dealing just with section 6 first.

Ms. Gigantes: In fact, I have moved subsection 6(3). You have just

brought to my attention that I have neglected to move subsections 6(1) and 6(2).

Mr. Chairman: That is right. That is what confused me.

 $\underline{\text{Ms. Gigantes:}}$  My apologies. Shall we put that one on hold and come back to it?

Mr. Chairman: That might be better. We are taking them in order. I would prefer to go to subsection 6(1) and take them in chronological order. Would you speak to your amendment on subsection 6(1)?

Ms. Gigantes: Subsection 6(1) of the bill says, "Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer."

In effect, we are in a position here where we do not want to remove that because it is one of the few elements left in the bill that is going to stand in good stead for women of this province, but we would like to add what is now numbered as subsection 6(1) to section 6. I do not know quite how to number that because we have a subsection 6(2), which our motions on subsection 6(1) and subsection 6(2)--numbered in our package as pages 22 and 23--are intended to replace.

In other words, given the discussion earlier today and the loss of a previous motion that we put, we would like to retain subsection 6(1) as printed in the bill. We would like to remove subsection 6(2) as it is printed in the bill and substitute two other motions for that, which are on pages 22 and 23 of our original amendment package.

I am sorry for the complexity of this, which has to do with the nature of the amendments we discussed this morning.

Mr. Chairman: According to legislative counsel, we can renumber. To make it convenient, we will simply add the numbers 3, 4 or whatever in order to accommodate your amendments. You do not have to speak to your amendment to replace subsection 6(1) with your amendment as an example. If you want subsection 6(1) to stand, we can carry subsection 6(1) and then your subsection 6(1) can be another number in the bill.

Ms. Gigantes: This is wonderful.

Mr. Chairman: You see how helpful we are trying to be?

Ms. Gigantes: Absolutely.

Mr. Chairman: That is not to say that it will carry; I am telling you only how we can number it if it does carry.

Ms. Gigantes: Yes.

Mr. Chairman: Is there any comment? Do you wish to deal with subsection 6(1). your amendment?

Ms. Gigantes: No, why do we not deal with it as it is printed in the bill?

Mr. Chairman: Subsection 6(1) as printed in the bill. You do not have any objection to that, do you?

Ms. Gigantes: That is correct.

Mr. Chairman: All right. Is there any comment from the Conservative Party on subsection 6(1)? Everyone is happy with it.

Ms. Gigantes: We would like to replace subsection 6(2) with two motions. You will find them printed on pages 22 and 23 of our original amendment package. They are numbered with the wrong numbers. The first is numbered subsection 6(1).

Mr. Chairman: Ms. Gigantes moves that subsection 6(1) of the bill be struck out and the following substituted therefor:

"(1) No employer shall engage in any act, or enter into any agreement or arrangement that is intended to defeat or does defeat, directly or indirectly, the intent of this act."

Ms. Gigantes: This will be followed by a motion which we will put which would read, "Every bargaining agent shall negotiate in good faith for compensation practices that provide for pay equity while fairly representing the bargaining unit employees."

# 1220

The reason we would like to see two separate motions under section 6 that would replace subsection 2 as printed in the bill is that we feel there should be an onus placed, in the first place on employers and in the second place on bargaining agents, to carry out the spirit and intent of this legislation and, in fact, when there is an indication that is not happening, it should be possible to appeal to the commission.

On the one hand, perhaps in one case the employer is what you might call a "bad apple" employer. This employer is not following the spirit of the act but in fact is trying to defeat it by agreements or arrangements.

On the other hand, there should be an onus placed on bargaining agents to negotiate in good faith and also to provide fair representation for the employees who will be involved in the equal pay plan, if there is a plan.

Mr. Chairman: I find the language intriguing in those two subamendments.

### Ms. Gigantes: Yes.

Mr. Chairman: You have put one in the negative and the other in the positive, and I wondered why you had cautiously worded it that way. The government's subclause included the two together and sort of looked at it in a positive way in its totality, but you have separated it as though the--

Ms. Gigantes: No, you will notice that the government motion 6(2), as printed in the bill, is a negative statement. The reason you are stuck with a negative statement as far as employers are concerned is that the employer always has the initiative, and if there are going to be changes so that the intent of the legislation is defeated, then they are likely to come from the employer.

However, we do feel there ought to be an onus placed on bargaining agents, not only to negotiate in good faith but also to negotiate fairly on

behalf of members. There are bargaining agents who represent locals where the majority of workers may be women but where practices in terms of both leadership within the local and also in terms of the compensation schemes that have been arrived at through collective bargaining are going to have to change when this legislation becomes effective.

Mr. Polsinelli: Ms. Gigantes, I do not think I quite understand the full impact of your amendments, but what they appear to be doing is changing the complaint-based mechanism for companies that have less than 100 employees and are represented by a bargaining agent and are unionized. It appears to me that 6(2), or your second amendment, would require "shall," which means it will require the bargaining agent to negotiate for some type of an equal pay plan, and your new amendment 6(1) would tell the employer that, effectively, he cannot hinder and he must negotiate.

In a situation where you have a unionized establishment of under 100 employees, effectively, the bargaining agent has a right to an equal pay plan under your amendments. That is the way I read them. I could be wrong. Perhaps you could expand on that.

Ms. Gigantes: That is something I would like to address in a later amendment, but you are right. It does mean that. If you want to amend that so that is not an onus, go ahead, to deal with our later amendment, which would be that there should be equal pay plans wherever there is a union, no matter what the size of the establishment.

Mr. Polsinelli: Okay, I accept that. I just wanted to understand if that was your intent in this piece, and if that is your intent in this piece, then effectively what you are doing is changing the complaint-based system for under 100 employees to a proactive system if they are represented by bargaining agents.

Ms. Gigantes: That is correct. However, Mr. Polsinelli, if that is your only objection to it, you can amend it, and if the subsequent amendment on the question of whether we have plans wherever this a bargaining agent--

Mr. Polsinelli: I was just trying to understand it.

Mr. Charlton: You understood it.

Mr. Polsinelli: And I do not agree with it.

Mr. Chairman: Any further comments on the amendments? I will take them separately, in fairness to the mover. You may wish to support one and not the other.

Mr. Baetz, I draw your attention to the clock. If we are going to vote on this, we have about three or four minutes before we have to take a break.

Mr. Baetz: I suspect I know what is intended here. You are after the bad apple, as you have indicated. What bothers me about the way this amendment is stated is that you are going to go after motivation. It says, "No employer shall engage in any act...that is intended." How can you determine what the intentions of the employer are?

"Directly or indirectly." You are now trying to determine cases where you say an employer intends to indirectly subvert this act. I get very worried with that because you can surely very easily develop a witchhunt at that point.

Ms. Gigantes: It is a big protection for employers against complaints to indicate that any employee who is going to lodge a complaint has to be able to document that it was the employer's intent. For example, the employer may change job classes, may change the distribution of male and female occupancy in certain job classes. It may not be the employer's intent thereby to get around the mechanisms of this act. When you put in that the employer, in order to have a complaint upheld, has to intend to elude this act--

Mr. Baetz: Who interprets that he is intending to indirectly get around this legislation? That is open to a great deal of interpretation, is it not?

Ms. Gigantes: It would have to be documented very carefully in order for the Pay Equity Commission to decide that there had been an intent. I suggest to you that any time we set up legislation which says that you have to prove somebody's intent, what we have set is legislation that is very hard to make effective. I do not know how else to deal with the question of an employer whose intent is to elude the act, except to speak of the intent. I would suspect that under this amendment there would be very few cases in which one could demonstrate intent, but in those cases—and they are known familiarly as the "bad—apple cases"—where there is an intent, and it can be documented, then it seems to me that in order to make this legislation effective, we have to make it clear to employers right from the start.

Mr. Baetz: Perhaps the parliamentary assistant can help me to understand.

Mr. Ward: I do not want to go at length because I really do think we all understand the process and the thrust of the argument, but in a nutshell, the difficulty with your wording may in fact not be a difficulty in terms of what it is intended to resolve. But what would happen by adopting your wording would be the reversal of the cnus. Somebody would have to prove that he was not guilty of something, whereas our wording is the other way around. That is it, simply put. That is one of the problems with bad-apple resolutions in any piece of legislation.

Ms. Gigantes: If you could consult with legislative counsel, I think legislative counsel would probably tell you that the onus under this amendment will have to lie with the complainant to demonstrate intent. Could I ask for a reading of that?

Mr. Chairman: I think this might be an appropriate time to break.

Mr. Revell: I would like to comment on--

Mr. Chairman: Can it hold until this afternoon?

Mr. Baetz: I was going to make exactly that suggestion. Perhaps right after lunch the parliamentary assistant could state this case.

Mr. Chairman: There are a couple of matters that have to be reviewed with respect to section 5 and the interpretation Ms. Gigantes has requested in connection with section 6. We will break until two o'clock. We are adjourned until that time.

The committee recessed at 12:29 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
MONDAY, APRIL 6, 1987
Afternoon Sitting



# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

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Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe. W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor Barlow, W. W. (Cambridge PC) for Mr. Rowe

Also taking part:

McClellan, R. A. (Bellwoods NDP)

McLean, A. K. (Simcoe East PC)

Pierce, F. J. (Rainy River PC)

Sterling, N. W. (Carleton-Grenville PC)

Clerk: Mellor, L.

### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Legislative Counsel

#### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

## LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

# Monday, April 6, 1987

The committee resumed at 2:08 p.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good afternoon, members of the committee. This morning, we stood down section 5 for some further consideration and we reviewed section 6. I believe it is the intention now to proceed with section 6 and then perhaps go back to section 5. Mr. Ward, do you have any comments on section 6?

On section 6:

Mr. Ward: Not really at any greater length, because I think we had a pretty fair discussion on it, other than to say that we--

Ms. Gigantes: Are we dealing with the whole section here or are we dealing with the amendments that were--

Mr. Ward: We carried subsection 6(1). I thought we were dealing with subsection 6(2).

Ms. Gigantes: Good. Or whatever it is called.

Mr. Chairman: We will have to clear up the numbers we are actually voting on because we have renumbered part of section 6. It would appear that we have subsection 6(1) completed and we are now on subsection 6(2) and amendments thereto. Ms. Gigantes, did you want to make a comment?

Ms. Gigantes: I hope it is understood that, having passed subsection 6(1), what we are doing in the amendments that we are moving now, which are numbered on pages 22 and 23, is attempting to substitute them for the amendment 6(2) and have separate clauses that deal with the obligations of the employer and the bargaining agent.

### 1410

Mr. Chairman: If you are ready to vote on the NDP amendments, the first amendment, which for purposes of trying to keep this as understandable as possible we can number subsection 6(2), which may be renumbered by legislative counsel if the amendment carries, will be the amendment relating to the bargaining agent and subsection 6(3) will be the amendment related to the employer.

Ms. Gigantes: No. I prefer to order it differently. If you did it the other way around, it would probably be easier to follow. The first one, on page 22 of the NDP amendment package, is the employer.

Mr. Chairman: What is the difference?

Ms. Gigantes: You extended them the other way around.

Mr. Chairman: I do not see what the difference is, other than to confuse us even further. You want to make 6(2) the one related to the employer and 6(3) the one related to the bargaining agent.

Ms. Gigantes: That is how they are ordered in our package.

Mr. Chairman: It does not happen to be the way they are in my package, but that does not matter. I do not think we should waste any time on it; we will just renumber them 2 and 3 and start with the employer.

The amendment I am going to call--I see Mr. Baetz is just coming in. He may wish to vote on this, so I will explain what it is. It is the part related to the employer, and it goes on to talk about any changes in work schedules or change of the ratio of women to men in a job class so as to avoid the requirements of this act.

Ms. Gigantes: No. Mr. Chairman, do you have a package of amendments from the NDP which has numbers on it?

Mr. Chairman: Yes, I have that.

Ms. Gigantes: I believe if you look at page 22, you will see the amendment we have been discussing.

Mr. Chairman: I have that, yes.

Ms. Gigantes: That applies only to employers. The next one, on the next page, numbered page 23, applies to the bargaining agent. What we have done is to split the bill's printed subsection 6(2).

Mr. Chairman: I see. You want your 6(1) now to be 6(2).

Ms. Gigantes: If you do not mind.

Mr. Chairman: Okay, can we vote on the 6(2) which is numbered page 22 in your book from the New Democratic Party? That is the amendment currently being proposed by Ms. Gigantes.

Ms. Gigantes: It looks after the bad apple employer.

Mr. Chairman: All those in favour of the amendment?

Mr. Baetz: Mr. Chairman, I thought the parliamentary assistant was going to tell us how he deals with the bad apple employer. Would this not be a good time to have him shed some light on it, before the vote? Perhaps they have the answer. If not--

Mr. Ward: Again, I think it was covered often with the discussion this morning as to the wording of the amendment being such that you would have to make a determination of intent or motivation, which we do not believe you can do effectively in the process. That is why our wording is preferred. It is almost the reverse way of putting forward the point.

Mr. Baetz: Which is what I said, but I thought maybe you were going to shed further light on it.

Mr. Ward: That is as much light as I can shed.

Mr. Baetz: That was very eloquent, thank you very much. No further light.

Mr. Chairman: All those in favour of the amendment?

All those opposed?

Motion negatived.

Ms. Gigantes: On the separate proposal, which is related, though separately, it was suggested by Mr. Polsinelli this morning that what this would mean is that every bargaining situation would be one where there was a plan.

I would submit that the same kind of comment might be made about subsection 6(1). There is nothing very different in terms of the assumptions that are made in subsection 6(1) as printed in the bill and the 6(3) we are submitting here, which would read, "Every bargaining agent shall negotiate in good faith for compensation practices that provide for equal pay for work of equal value while fairly representing the bargaining unit employees."

Mr. Chairman: Any comment with respect to the proposed amendment?

Mr. Ward: Again, we prefer our wording. I suppose it comes down to how you want to put forward the thrust of the argument. I would also point out that the reference is to "equal pay for work of equal value" as opposed to "pay equity," which you have already dealt with.

Ms. Gigantes: In fact, when I first read that, I substituted "pay equity" and I would do so again.

Mr. Ward: Okay. Again, our preference is the bill as worded.

 $\underline{\text{Mr. Chairman}}$ : I will call the amendment then. There appear to be no further comments.

All in favour of the amendment?

Opposed?

Motion negatived.

Ms. Gigantes: We have another amendment to section 6.

Mr. Chairman: Is this subsection 6(3) now?

Ms. Gigantes: This would be subsection 6(3) now.

Mr. Chairman: How be we cover off subsection 6(2) then?

Shall subsection 6(2) carry, as printed?

Opposed?

Carried.

Mr. Chairman: Now we will go to subsection 6(3).

Ms. Gigantes moves that section 6 of the bill be amended by adding thereto the following subsection:

"(3) No employer shall change work schedules or change the ratio of women to men in a job class so as to avoid the requirements of this act."

Ms. Gigantes: We believe this is a necessary addition to the general provisions of section 6, if we are going to deal with this legislation in the terms in which the government wishes to deal with it; namely, the shifting of work schedules can lead an employer to an exemption under section 7, which this committee has already approved, and the shifting of the sexual incumbency of job categories could easily lead to a situation where an employer could avoid the application of this legislation to his or her establishment. We would like to see a general provision in section 6 that would specifically say to employers, "That is an illegal act within the framework of this legislation."

Mr. Chairman: Are there any further comments on section 6? This is an added subsection to section 6 being proposed; we have covered subsections 6(1) and 6(2) and this will be subsection 6(3). Any comments on subsection 6(3)?

Ms. Caplan: On the first part, where it says, "No employer shall change work schedules or change ratios," I think there are two places where that is presently dealt with in the bill as written. Clause 7(4)(c), which says that "the work is performed on a regular and continuing basis, although for less than one third of the normal work period that applies to similar full-time work," would deal with the work schedules, and anybody who is working on a regularly scheduled basis would be covered; so we think that is redundant and unnecessary.

Second is the principle Ms. Gigantes articulated about moving people into different jobs, and I would suggest that the historical incumbency factor in the bill also deals with that. I would suggest that the amendment is really redundant. We do not believe it is required and will not support it.

Mr. Chairman: Ms. Gigantes wishes to speak again, but I will go to some other member if you wish to make a comment and take it in rotation. Ms. Gigantes.

Ms. Gigantes: If the problem as far as the government was concerned were merely a matter of redundancy, then surely it would not hurt to say it twice and to say it explicitly twice.

The problem, as Ms. Caplan understands quite easily, if she turns to page 16 of her bill and the rules that govern the use of the exemption for casual on-call employment, is that an employer who is employing somebody on a regular and continuing basis can switch the nature of that work and come under the exemption provided by subsection 7(3), which says, "A position that an employer designates as the position that provides employment on a casual basis may be excluded in determining whether a job class is a female job class or a male job class and need not be included in compensation adjustments under a pay equity plan."

We were told when we looked at the exemptions provided to employers under section 7 that, of course, there would be protections available under section 6 so that this kind of unscrupulous behaviour did not go on. I would like to see those protections spelled out in section 6. I think we need them now that the committee as a whole has adopted the exemptions in section 7.

Furthermore, when we talk about people in a job class and the sexual incumbency of job classes that will pass the test of 60 per cent female predominant to 70 per cent male predominant for a comparison to be made, it is all very well to refer to historical incumbency, but unless there is a provision that allows employees, particularly unorganized employees, easily to identify before the Pay Equity Commission what is going wrong in their work place, they are going to have to prepare an enormous historical incumbency argument in order to make a case. I do not think anything less than hiring a lawyer and going into a huge effort is going to allow them to make that case before the commission. It would be very helpful to have a prohibition on that kind of manipulation—or "gerrymandering" would be an appropriate word too—taking place.

As you see, the side bar identifies the subsection we are proposing as "tampering prohibited." We might well say "gerrymandering prohibited." If you set up the tests and the exemptions, then I think in this general section 6 we need some protection for women who may suffer under gerrymandering, tampering and manipulation.

Mr. Ward: Again, I disagree. I have some difficulty in understanding the thrust that you believe that, in the absence of the 60 per cent and 70 per cent, a very onerous and difficult situation would be created to make a determination of historical incumbency, should the numbers ever shift, when it was your position that historical incumbency would be the only way of determining female and male job classes.

One, I am a little surprised by that argument. Two, I think it goes beyond the whole issue of redundancy in terms of having this kind of bad apple section put in there, because then there is a requirement to demonstrate every time there is a complaint in terms of changes in work schedules that a change in the work schedule was not done to avoid coverage under the bill.

Ms. Gigantes: If I may, you have a provision which allows the review officer to deal with vexatious and frivolous complaints. It seems to me quite clear that a review officer dealing with a complaint of this nature in the first round could easily determine whether it was something on which a case could be made. The onus in this provision would be on the employee or group of employees to indicate that there was a demonstrable association between what the employer was doing with work schedules and incumbency ratios designed to avoid the requirements of the act, and that is not easy to prove.

Mr. Ward: We have just gone through the same argument three different times, and I do not believe anything has changed.

Mr. Chairman: There being no further comment, I call for the vote on subsection 6(3). All in favour of the amendment? Opposed?

Motion negatived.

Ms. Caplan: There is a section 6a.

Interjection: That is a new subsection.

Ms. Gigantes: It is in the new package of our amendments.

Mr. Chairman: Okay. In the new package it is under another section so I now will call for section 6, as amended, to carry. All those in favour? All those opposed? Carried.

Mr. Ward: It was not amended.

Mr. Chairman: It was not amended. It still stands. We had a lot of proposed amendments.

Mr. Ward: It was not amended.

Mr. Chairman: In parliamentary terms, I think it still carried whether or not it was amended. It was attempted to be amended.

Shall section 6, as it was attempted to be amended, carry?

Section 6 agreed to.

Mr. Chairman: We are on section 6a.

Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"6a. Every employer shall make available to employees all information necessary to exercise full rights and responsibilities under this act, including information on job classifications, job descriptions and rates of compensation to ensure that the employees are able to determine if pay equity has been established and is being maintained in the employer's establishment."

Ms. Gigantes: We put forward this amendment because there will be a great many cases where there are not equal pay plans. There will be a great many cases where there are bargaining agents in an establishment where there are also a lot of nonunionized employees. The nonunionized employees in particular will need some kind of provision that will allow them to have information so that they can look at the adequacy of equal pay plans that may be developed covering their positions in areas where there are no equal pay plans, in establishments where there are no equal pay plans—all those firms that have fewer than 100 employees.

It is imperative that employees have provided to them the kind of information that will allow them to make a judgement about whether there ought to be some complaint by them to the commission about the adequacy of the compensation rates available to them in the establishment. It is imperative that women be given this kind of information; otherwise, they will have no way of knowing whether there is compliance with this legislation.

Mr. Baetz: I cannot pinpoint the spot, but somewhere in the legislation these requirements are spelled out, without spelling them out in full detail but certainly with the intent of doing exactly what this wants to do in detail; I cannot tell you where.

Mr. Ward: I think what you have before you is put forward as an emendment primarily out of concern for those firms with 100 and fewer employees for which at present there is no requirement to formulate a pay equity plan. As I see it, the intent of the amendment is to establish some

sort of de facto requirement to go through the entire exercise of formulating a pay equity plan in those firms that are not required to formulate a plan.

For those firms with 100 or fewer employees that operate on a complaint-based system, there is a requirement during the course of the complaint being laid through the normal course of the hearing process, and the rules of natural justice, that there has to be a certain amount of disclosure and exchange of information during that process. Basically, this is a de facto requirement for a proactive system in the realm that is not covered by a requirement to put forward a claim.

Ms. Gigantes: That is a backwards statement. If this section were to be made part of the bill, what we could expect is that there might be fewer complaints made to the equal pay commission. If women have the information about job descriptions and pay schedules within their firms, they will not feel obliged to go and launch a complaint to find out what the job descriptions and pay schedules are.

Right now under this legislation, if I am working in a firm with 75 employees, the only way I can get information from the employer about the state of compensation schedules, job descriptions and the pay rates associated with other positions in the firm is to lay a complaint.

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Mr. Barlow: The whole issue is that in a smaller firm, there is no such thing as a job description in most cases. It is just not there in a firm with fewer than 25 or 30 employees. In most cases, they do not have job descriptions.

Ms. Gigantes: Make an amendment. If you feel job descriptions start at 35 employees, make an amendment.

Mr. Barlow: No. I am not prepared to support this in any way, shape or form. It is just furthering intervention into private business.

Ms. Gigantes: It is a simple provision of information for which we are looking. How are women in firms of fewer than 100 going to determine whether they should be laying a complaint? Should we tell them all to go out and lay a complaint and then they can find out what is going on in the firm?

Mr. Barlow: No.

Ms. Gigantes: That would be the reasonable thing to do; to say to women working in a firm with between 10 and 99 employees, "If you want to know what is going on in your firm and if you want to have the effective parts of this legislation"--if there are any left--"apply to you, go and lay a complaint because otherwise you are not going to get the information." Is that what we want?

Mr. Barlow: I have made my comments on it.

Mr. Chairman: All right. If there are no further comments, I am going to call for a vote on this section. It is numbered 6a and is an addition to section 6. The other parts of 6 have already been--

Ms. Caplan: No, it is a new section 6a.

Mr. Chairman: Did I not say that?

Ms. Caplan: No.

Mr. Chairman: What did I say?

Ms. Caplan: Never mind.

Mr. Ward: It is not important.

Ms. Caplan: Just say it.

Mr. Chairman: Section 6a is what we now are voting on, which is a new section of 6.

Ms. Caplan: No, it is not a new section of 6. It is a new section of the bill.

Mr. Chairman: But it is still 6.

Ms. Caplan: No, it is 6a.

Mr. Chairman: Yes, that is right.

All those in favour of the amendment? All those opposed?

Motion negatived.

On section 5:

Mr. Ward: We have just tabled an alternative amendment and I have to admit that I have not seen it.

Interjection: The alternate?

Mr. Ward: The alternate. There are some slight differences from what was tabled this morning.

Ms. Caplan: It is very similar.

Mr. Ward: It is very similar. Perhaps Ms. Marlatt or Ms. Herman could explain how it differs from what is on the table. It is labelled "Government Motion" and has subsections 5(6) to 5(10) and has "Alt." written on the top right corner.

Ms. Caplan: This is it here. It has just been handed out.

Mr. Chairman: Can we dispose of subsection 5(1) by way of vote? There are no proposed amendments on subsections 5(1) and 5(2). If there are no issues of import surrounding those two subsections, I will call for subsections 5(1) and 5(2).

Ms. Gigantes: Can you hang on for a second? We have so many packages here now.

Mr. Chairman: Okay, we will take a moment.

Ms. Gigantes: We have a subsection 5(2a) to propose.

Mr. Chairman: That is not related to it.

Ms. Gigantes: That is fine. We will deal with this later.

Mr. Chairman: Do you want to do the two of them together?

Ms. Caplan: Yes.

Mr. Chairman: We are calling subsections 5(1) and 5(2) then. All in favour? Opposed? Carried.

Mr. Chairman: Apparently, in the French version, subsection 2 was amended this morning. It was one of the technical amendments. I will have to ask that subsections 5(1) and 5(2), as amended, be carried. All in favour? Opposed? Carried.

Do you want to proceed with the differences between the government's original amendments and those now proposed?

Ms. Herman: The change was made to subsection 5(9). In our previous amendment, we stated it was "the job rate of the individual job class with the greatest number of employees" that was the job rate for comparison purposes. We now have clarified that the particular job with the greatest number of employees in it is also the job to be used for job comparison purposes. It says here "the value of the work performed...is the value of the work performed by the group."

In your example, both the rate of job class 3 and the value of the work of that job class is what is used for comparison purposes. It does not change anything. We were talking this morning as if that was the case, but we noticed that the way it was worded before just talked about the rates being compared, as opposed to the value of the work.

Ms. Gigantes: That is helpful as far as it goes. At least we know what the amendment is supposed to mean on that question. It does not solve the problem we identified this morning, which is that if female 6 is comparable to male 3, and female 1 is comparable to male 1, even with your subsection 8(3) amendment, the way of addressing the problem is not going to be as satisfactory as if we had done a direct comparison between female 6 and male 3 in terms of the occupants of that class unredefined. The same is probably increasingly true for female 1 compared to male 1, because the gap is likely to be larger between female 1 and male 1 than it is between female 3 and male 2.

Ms. Caplan: Not necessarily.

Mr. Charlton: No, but it is possible. That is the point.

Ms. Gigantes: There is no way of telling how that will fall out, but one can intuitively sense that when you have a job group with that many classes in it and the female 3 is compared to male 2, the discrepancy in terms of pay is probably not as large between 3 and 2 as it is between 1 and 1.

Ms. Caplan: I will speak to that. To follow up on what the parliamentary assistant said this morning, it was never the intention of this legislation to interfere with existing job classification systems, but to find

a way to maximize the comparisons in doing so. The suggestion of Ms. Gigantes is hypothetical and may or may not occur.

Ms. Gigantes: That is correct.

Ms. Caplan: In fact, it could be the reverse of what she is saying. I think this is a reasonable proposal, with the least amount of disruption of existing systems. This is found only with large employers who have these kinds of job classes and job series and we would be concerned about anything that would disrupt those or cause compressions. We just want to recognize what is existing and we think this will work best. Until it is shown that it does not—if that happens, we can have another look at it at that time—we think this is a reasonable approach.

Ms. Gigantes: I agree with Ms. Caplan; there is nothing that says that what we have just described as a more profitable, if you like, comparison between 1 and 1 is going to hold true in every case where this amendment might have effect. On the other hand, intuitively—I challenge you on this matter—you know it is quite likely to be happening that way. Second, the alternative is not to adopt our proposed subsection 8(2). Subsection 8(2) is a separate matter.

Mr. Ward: Nobody suggested that your 8(2)--

Ms. Gigantes: Yes, she was, because she was talking about interfering with existing job class structures.

Ms. Caplan: No.

Ms. Gigantes: We are not proposing that at this moment.

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Ms. Caplan: To be fair, what we are not trying to do is reorganize or interfere with the reality of what is out there and your hypothesis based on an intuitive basis may or may not be correct.

Ms. Gigantes: That is correct.

Ms. Caplan: We do not know. Since we do not know, and this is recognizing the reality of what is existing, it is reasonable to take the position--

Ms. Gigantes: What exists right now--excuse me--for that female group of jobs is seven classes of jobs and what you are doing in this amendment is calling it one job class. You are interfering with reality. We have seven job classes that can be defined. The problem that was murmured about this morning, in terms of the government amendment and what it was trying to address, was the question of whether the 60 per cent female ratio would be reached in every one of those job classes, and the answer to that is we do not know. No one knows.

I still have a concern when we are making a proposal of this nature, which is to take seven job classes and combine them into one, that we are doing something that is going to prevent comparisons instead of increase comparisons. I think one could say there are cases like this one. I can tell you of cases like this one. At Carleton University in the clerical staff, when

you do a comparison with comparable male work class, that is exactly the kind of comparison you get. I did not make this one up. This is a real one.

Let us be clear about it. We are not increasing the number of comparisons with this amendment; quite the opposite. We are decreasing the number of comparisons. We are taking one job class in that female group and saying that is going to be the comparison that gets made, and everything else falls out of that. Is that right?

Ms. Caplan: That is right.

Ms. Gigantes: That is exactly what we are doing. We are saying you take group 3, if that has the greatest number, and if group 3 is comparable in terms of skill, effort, responsibility and working conditions, which is what the amendment now says, to group 2 male, then everything else about the comparison falls out of that in terms of the job rates. That becomes the job comparison benchmark.

Ms. Caplan: The converse could be true as well. All the rest would then remain and retain the relativity.

Ms. Gigantes: Yes, but do not tell me you have increased job comparability because you have not. What you have done is you have taken seven job classes and collapsed them, for purposes of comparability, into one, and everything else falls out of that. You have done one comparison. You have compared female 3 with the top rate for male 2, and you have done that simply because there are more females in group 3 than there are in 1 to 7, so you have reduced the number of job comparisons; you have not increased it.

There is another concern I have, which is that when you read this amendment, even as it has been amended now by the government, it is not at all clear whether subsection 6--

Ms. Caplan: We just do not agree.

Mr. Ward: Let us be clear. You may have reduced the number of comparisons that have to be made. You have not reduced the coverage, though.

Ms. Gigantes: You may have reduced the payout. We do not know that.

Mr. Ward: You may have increased the payout.

Ms. Gigantes: Suppose that in some situations this would benefit women. Let me ask, in subsections 5(6) through (5)10, as you have proposed them here, where the bargaining agent does not agree in a case where there is a bargaining agent, does it mean the employer can go ahead and treat a group of jobs as a single job class or does subsection 5(8) mean that without the agreement of the bargaining agent, they should not be treated as one job class?

Mr. Ward: If the bargaining agent and the employer do not agree in terms of this, as in other aspects of the plan, they do not have an agreed-upon pay equity plan and it is subject to the process anyway.

Ms. Gigantes: You would have to go through the whole process of a complaint over that. Let me put it this way; let me put it in the other sense-

Mr. Ward: It is the same as if they do not agree on the other aspects.

Ms. Gigantes: Yes, but what you are doing here is saying to the employer, "You can take all these classes and lump them into one group and call it a job class and pick the job class within that group that has the greatest number of incumbents and that is how you can set out your first position in discussions with the bargaining agent."

The bargaining agent is going to have to go through the whole process of objecting to a plan, based on that, before the matter can be straightened out. That does not make sense, if you said that subsection 6, for example, related only to a situation where there is no bargaining agent, so that the test there becomes that 60 per cent of the employees are female before you can lump it into one job class, and you said under subsection 9 that wherever there is a bargaining agent, the employer shall not proceed under subsection 6.

What we have done here with this amendment, even if one could support it intuitively—and I do not see a good reason for doing that—is to set out for the situation where there is an organized establishment a terrible bollix in the mechanism, because you are going to require the bargaining agent to go through the creation of a planned process based on something the parties disagree about at a very fundamental level. Why do it? Why put everybody through that process?

Ms. Caplan: (inaudible) play fair.

Ms. Gigantes: Why do we not just say it is optional? Why do we not say where a bargaining agent agrees, fine; where a bargaining agent does not agree, no. God help the unorganized.

Ms. Caplan: We are talking about parameters, being as clear as we can and having the least amount of confusion. I think the intent is obvious and the intent is—

Ms. Gigantes: Can you tell me the intent of subsection 8?

Ms. Caplan: We just disagree on the impact, Mr. Chairman.

Ms. Gigantes: Does subsection 8 follow automatically from subsection 6? Wherever you find a group of jobs that are 60 per cent female, can the employer, under subsection 8, with or without the consent of the bargaining agent, right from step 1, say that a group of jobs now become a job class? This is fundamental.

Ms. Caplan: Let us just vote.

Ms. Gigantes: Could I make a suggestion? If you made it clear that subsection 6 did not necessarily trigger subsection 8--or to put it the other way around, where there is a bargaining agent, if there is 60 per cent female incumbency in a group of jobs, such as the one we have up here, it does not necessarily trigger a situation where the employer treats that group of jobs as he wishes, as one job class, without the consent of the bargaining agent.

If you say in one situation it may be of benefit and in another situation it may not, for heaven's sake, recognize that where there is a bargaining agent, there ought to be discussion about that to get it settled whether it is a benefit before you start creating a plan, about which somebody

is then going to have to go jarring through the whole mechanism of plan rejection about.

Ms. Caplan: I think that would just create confusion.

Ms. Gigantes: If you think this a straightforward amendment, you must be able to see in the dark.

Mr. Chairman: Do you have any further comment, Mr. Ward?

Mr. Ward: No.

Mr. Chairman: Are there any other comments from members of the committee? If not, I will call the vote on subsections 5(6) to (10).

Ms. Gigantes: Could I get one answer from the parliamentary assistant? Is it the intent of the government that in section 5, where there is a bargaining agent and the bargaining agent does not agree with the grouping of jobs into a job class, the employer can nevertheless proceed?

Mr. Ward: No. It is subject to the same provisions that are covered in any other situation under the bill.

Ms. Gigantes: But it means you have to wait for the plan to be constructed and then object to the plan.

Mr. Ward: You go through the process as you would go through any other.

Mr. Chairman: Are you ready for the vote? The motion you will be voting on is the government motion which has the word "alternative" typed in the right-hand corner at the top of the page.

Ms. Caplan: Shall I read it?

Mr. Chairman: I do not think it is necessary. Does anybody want it read? It is rather lengthy.

Ms. Caplan: As printed.

Mr. Chairman: Ms. Caplan moves that section 5 of the bill be amended by adding thereto subsections 6, 7, 8, 9 and 10, as printed in the government motion marked "alternative" before us.

Motion agreed to.

## 1450

Mr. Chairman: We will have to go back to pick up subsection 5(3), and we have some amendments.

Interjection.

Mr. Chairman: Subsection 5(2a) is an NDP amendment. Ms. Gigantes, when you find the right page, would you speak to that one?

Ms. Gigantes: I am going to withdraw subsection 5(2a).

Mr. Chairman: Subsection 5(2a) is withdrawn. We will move to the government motion on subsection 5(3). I think it is a technical amendment.

Ms. Caplan moves that the English version of subsection 5(3) of the bill be amended by striking out "and" at the end of clause (a) and inserting in lieu thereof "or."

Motion agreed to.

Mr. Chairman: Shall subsection 5(3), as amended, carry?

Ms. Gigantes: Are you doing clause 5(3)(a) as part of subsection 5(3)?

Mr. Chairman: I will treat them all in one group. I am sorry; there is a clause 5(3)(a). Just subsection 5(3) then. All in favour of subsection 5(3), as amended? All those opposed? Carried.

Ms. Gigantes moves that clause 5(3)(a) of the bill be amended by striking out "lowest" in the first line and inserting in lieu thereof "highest."

Ms. Gigantes: This legislation, among other things, will permit in some cases equal pay plans to be created which actually provide for the comparison of jobs across establishments—in other words, outside of one bargaining unit, compared to another bargaining unit within the firm. It might even be that it would allow for an equal pay plan where a member of a bargaining unit or some members of a bargaining unit could have their positions compared. It would be on the tail end of the comparison; a comparison of unorganized jobs.

However, this legislation is restricted in the sense that when we start to do the comparisons within an establishment, what we are saying first is that the comparison should be made within a bargaining unit. That will be fine in some cases. In other cases, it is going to be no good at all because within some bargaining units we will find positions that are occupied by males and that are the closest comparable in terms of skill, effort, responsibility and working conditions, even though those job classes which are male-predominant may be made up of people who are doing what is traditionally known as women's work.

In that case, the legislation would be restricted in that it would call upon the comparison to be made first within the bargaining unit when, in fact, it probably should be made outside the bargaining unit, perhaps in a different bargaining unit, perhaps among unorganized employees, perhaps even among management employees.

That is why we consider the word "lowest" in the first line of clause 5(3)(a) to be very restrictive. It is a statement, it is a test and it is a mechanism that we think will inhibit real job value comparison within an establishment. We feel that if we can change the word "lowest" to the word "highest," we will have reinforced the process that this legislation purportedly attempts to establish, which is to make sure that women in Ontario are being paid the value of their work.

Mr. Chairman: Are there any further comments? Having searched out any further comments and having found none, I shall consider the motion placed, moved by Ms. Gigantes, and I will call the vote on clause 5(3)(a). All

in favour of the motion? Let the record show there was a vote that cannot be counted in that group. Opposed? The motion is lost.

Are there any amendments to clause (b)? All right, then I will ask you to carry 5(3)(a) and (b). Shall 5(3)(a) and (b) carry? Opposed? Carried.

Ms. Gigantes moves that subsections 5(4) and (5) of the bill be struck and the following substituted therefor:

"(4) Comparisons required by this act shall be made establishment-wide."

Ms. Gigantes: This is a follow-up to the item which I raised in the previous amendment, and it has to do with the way this bill is supposed to operate on behalf of women in work places in Ontario. The amendment says that the job class comparisons should be made on an establishment-wide basis, and the purpose of that is to make sure that female job classes, which have to be 60 per cent female-predominant, being compared to male job classes in the establishment, which have to be 70 per cent male-predominant, shall at least be made establishment-wide. The comparison shall be establishment-wide.

That does not mean the equal pay plan has to be establishment-wide. It means that the comparisons upon which an equal pay plan are established shall be made inside bargaining units, between bargaining units, between a bargaining unit or two bargaining units and workers who are not in a bargaining unit, all in the same establishment. It means, at least for purposes of job value comparison, you are not hidebound inside the steps that are laid out in subsections 4 and 5. It says that the mechanism of the bill shall be flexible.

Mr. Ward: We do not support the amendment. The preference was to do it within first and then go outside. Frankly, in terms of even the impact of the amendment, by going your establishment-wide route without first going through those steps, the impact could well be that the comparable of equal value could be at a lower rate. I do not think your alternative is helpful.

Ms. Gigantes: Can you give us an example of that?

Mr. Ward: By going outside?

Ms. Gigantes: Yes, give us an example.

Mr. Ward: Well, I--

Interjection.

Mr. Chairman: Ms. Caplan, I know you will not picked up for purposes of Hansard. Maybe you want it that way. I do not know.

Ms. Caplan: No, not at all.

Mr. Chairman: There were whispers that I had difficulty in hearing. I was straining to hear your comments.

 $\underline{\text{Mr. McClellan:}}$  She was saying that he could not think of an example, which seems to be true.

Ms. Gigantes: I would like to hear you explain it, because I think I will have some comments on your explanation.

Mr. Ward: I cannot think of an example. I am just telling you--

Ms. Gigantes: No, I bet you cannot. Within most private firms, for example, where you have one union, and most of them are not organized, but where you have one union or maybe two unions and you have a bunch of unorganized workers, you know who is unorganized? The women. You know that.

# 1500

If they have to be compared among the unorganized workers first, and if the organized workers are compared within each bargaining unit and then possibly with each other and then possibly with the unorganized workers, the people who are going to end up losing in that system are women. Unless we say that the comparisons are done across the broad range of jobs within the establishment, everyone knows who is going to end up not having an effective comparison. It is going to be the women.

Mr. Chairman: I want to be clear on what you are saying. You are saying that the comparison should be made between a union and a nonunion group.

Ms. Gigantes: Yes, of course. We are not talking about--

Mr. Chairman: That is a quantum leap in logic in terms of what this bill proposes.

Ms. Gigantes: In fact, it is contemplated here, Mr. Chairman. Take a look at subsection 5(5):

"If, after applying subsection (4), no male job class is found in which the work performed is of equal or comparable value to that of the female job class that is the subject of the comparison, the female job class shall be compared to male job classes throughout the establishment."

The bill already contemplates that, but only where there is no male-comparable within the bargaining unit or outside the bargaining unit, wherever the comparison starts out first.

Mr. Chairman: That is right. That is a big difference.

Ms. Gigantes: Given the fact that we have already said in the previous section we are going to choose the lowest possible male-comparable within the structures within an establishment, within the confines of bargaining units or outside of bargaining units, we have two categories of people in a lot of firms: we have nonorganized people, and they are women; we have organized people, and they are men.

If you can find some comparable male job class group in the unorganized workers, that is where you have to make your comparison first, according to this legislation. If there is none, then you can go across the establishment. Furthermore, when you go across the establishment, you have to pick the lowest paid male-comparable.

Mr. Ward: I will let Ms. Herman elaborate further on this clause, but I do want to reiterate that the whole thrust of the bill was to put a fairly onerous requirement for employers to seek comparisons and, therefore, at the same time, recognize the existing relationships as they were, only by going through a process of moving from one to the other as need arose. I think what your amendment proposes is something different, but Ms. Herman may want to elaborate further on it.

Ms. Herman: As long as the employer is required only to pay the lowest rate, then if you are looking at the nonbargaining unit employees and there is a higher rate in the bargaining unit available, the employer will not likely pick that route anyway, even if you make the comparisons establishment-wide.

Ms. Gigantes: That is what I just told them when they voted down my previous amendment.

Ms. Herman: But if you look at the bargaining unit end, you may be keeping out some lower-rate comparisons, which may otherwise be available, by restricting it. In that way, you are maximizing the comparisons--

Ms. Gigantes: That assumes there is as much likelihood that the unorganized workers in a firm will be men as will be women, and that is not true.

Ms. Herman: No, but it assumes that as long as the lowest-rate comparison is the one the employer has to go to, by restricting it in situations where there is a comparison available it may help and it will not hurt because they can go to the lowest rate anyway.

Ms. Gigantes: Yes, I understand fully what you are saying. It is my hope the committee will take a look at this amendment, realize it is a reasonable amendment and a reasonable kind of restatement of a very hesitant, clumsy and, I think, barrier-ridden form of subsection 5(5), and then decide we are going to go back and remove that lowest rate. We could do that by common consent of this committee.

You are quite right. Once you have established the lowest rate, you can cross-compare across the establishment as much as you want, but it is not going to help the women who are stuck in the unorganized component of the establishment where there is a male-comparable. They are stuck with that, but we can change that.

Mr. Barlow: I have a question, because this amendment deals with the elimination of both subsection 4 and subsection 5. I guess it is a point of order, Mr. Chairman. I have quite a concern on subsection 5, but perhaps we should deal with this amendment, because I have no intention of supporting this particular amendment. Then I can discuss subsection 5 when we get to it.

Ms. Gigantes: Let us vote.

Mr. Baetz: I sense that the parliamentary assistant was prepared to regard this as a reasonable amendment a few minutes ago. Did I hear right?

Mr. Ward: No.

Mr. Baetz: No. I did not hear right at all.

Mr Ward: Just the reverse.

Mr. Baetz: I see. Sometimes Ms. Gigantes might even be right. I just want to be sure that we do the right thing here, whether we should stand this down--

Ms. Gigantes: No.

- Mr. Baetz: No. You want to stick to it, do you?
- $\underline{\text{Mr. Chairman:}}$  We will vote on it as soon as everyone has made their comments.
- Ms. Gigantes: If the Conservatives would like to caucus on this amendment, I would be quite happy to stand it down, if I felt there was any inclination on their part to consider it. Mr. Barlow has just said no.
- Mr. Chairman: I do not believe there is any indication that is what they want to do, but I am certainly open to any suggestion.
  - Ms. Gigantes: I do not want false promises.
- Mr. Baetz: We are always ready to look at any subject in a very reasonable, fair fashion. You understand that.
  - Ms. Gigantes: I always believe that you, to drag this process out--
- Mr. Barlow: What we would like is to make the best out of this legislation. So far, we have not been very successful in making the best out of a bad piece of legislation, but we are going to keep on trying.
  - Ms. Gigantes: How are we supposed to read that, Mr. Chairman?
  - Mr. Barlow: Any way you want.
  - Ms. Gigantes: What do these guys want to do?
- Mr. McClellan: They got their instructions from the parliamentary assistant. I think now they are ready to vote according to their instructions.
  - Mr. Ward: I think their idea is--well, let us not get into it.
- Mr. Chairman: Can we get back on track again? I hear a lot of comments being passed back and forth, some of which are not totally relevant to this amendment. That may come as a shock to the members of the committee, I know. However, I will go back to Mr. Baetz, and we will try to get back on track again.
- Mr. Baetz: I would just ask the staff to have one more run at this to say why they think the government motion there is right and this amendment has serious flaws in it. I think I heard you, but I am not sure, and I would really-we are on a very technical item here.
- Ms. Herman: My point was not going to whether the amendment was right or not. My point was just going to the fact that I did not think women would benefit by opening up the comparisons-establishment line.
- Ms. Gigantes: I had decided that if I could get them to support this, we would go back and reopen what you pointed out was the necessary change, which is that they are going to end up having women compared with the lowest male-comparable inside or outside the bargaining unit. If that is the way you want it, guys, vote for it. Do not drag out our agony.
- Mr. Baetz: Staff has repeated now, she said she had said it before, that this amendment would not necessarily help the pay equity in this particular instance, right?

Ms. Gigantes: Not without highest. We will have to go back and reopen that.

Mr. Baetz: That is what she said, and after all, that is what we are after. That is the ultimate goal of this whole thing.

Ms. Gigantes: She told you the way to do it, if you want to do it.

Mr. Chairman: All right. Can we hear from anyone else for any points of clarification before I call for the vote? If not, I will call for Ms. Gigantes's motion on subsections 5(4) and 5(5). Are you ready?

Ms. Gigantes: Do you want the positives?

Mr. Chairman: Yes. I will call the positives first. All in favour of the motion? Opposed? Lost.

Mr. McClellan: The Liberals are not voting.

Interjection: The Liberals do not even have to vote on these things.

Ms. Gigantes: No, they just let the Tories pass it for them.

Mr. Chairman: We are back to the main bill again. You wanted to speak to--

Mr. Barlow: Subsection 5(5).

Mr. Chairman: All right. Are there any further comments on 5(4)? If not, I will ask that it be carried, because Mr. Barlow has a question on 5(5). If there are no further questions on 5(4), shall 5(4) carry? That is carried.

#### 1510

Mr. Barlow: I have a great concern about subsection 5(5). Although I know I cannot move to have it deleted, I am certainly going to urge committee members to think very carefully about voting against 5(5). This is one that was raised primarily by the construction industry, the Council of Ontario Construction Associations, when it appeared before the committee.

Other business sectors have a concern about it. The concern is, if I can use the construction industry as an example, where the outside workers, the site workers, are generally organized and there is province-wide bargaining for the wage settlements in the construction industry, whatever settlement is arrived at takes into consideration the seasonal type of work that construction workers deal with; that is, they work for two or three days and if they have a couple of days of rain or snow or something, the bricklayers cannot go out and lay brick or the outside workers cannot go out and perform their jobs. Their wage settlements are at a pretty healthy rate of pay, generally in the range of \$22 or \$24 an hour. The industry is concerned about comparing those workers with its inside, normally unorganized workers; and the comparison could not really be considered at all relevant in many cases.

The argument the construction industry has presented seems to be one that should, I am sure--there is possibly an answer by the parliamentary assistant that could either support or deny my argument that it is a separate category, the business of, I suppose you can call it cross-union bargaining.

Mr. Charlton: Union pay for the underpaid.

Mr. Ward: I do not agree with the premise upon which you made the remarks arguing, I believe, for deletion of this subsection. Throughout the bill we have tried to ensure that comparisons are made and sought. To tie this into the difficulties the construction association had and its fears with regard to the bill.—I do not really think that those fears or concerns are particularly relative to this section of the bill.

I think their fears and concerns are that having been forced to seek comparisons, the only comparisons that exist are of jobs that are paid at a much higher rate, and whether those jobs are comparable is all part and parcel of the exercise. Quite frankly, we all had some real concerns with the presentation that was made by COCA, but it is not for us necessarily to dispute the premises on which that presentation was made.

Again, I really think that there was a complete misunderstanding of the process that was involved and that the difficulties they have are not necessarily relevant to this section.

Mr. Barlow: But the management of an individual construction company probably, in 99 cases out of 100, does not sit on the negotiating team. It is done by a negotiating team on behalf of all employers. The person sitting in West Flamborough or Cambridge had nothing to do with the negotiation. He or she has his or her own office staff, and the nonorganized workers working in certain aspects of his or her firm have nothing to do with the way the wage settlement is made for his or her outside workers. There is totally no comparison.

Mr. Ward: I do not understand the argument that you should not have to make comparisons throughout the establishment if the thrust of the brief presented to us was that, as per the bill, they went out and made those comparisons and, through making the comparisons, determined that the two positions were comparable positions and therefore the compensation had to be adjusted. If that was the argument in terms of how they did their evaluation, then so be it. It is really not for us.

Mr. Barlow: The thing is that these workers do not necessarily work 52 weeks a year times 40 hours, times \$22 an hour.

Mr. Ward: The issue is not whether they should have to seek comparables. The issue is whether, having sought them, they found them, or did it correctly in other words. I mean, were the jobs comparable?

Mr. Barlow: This is where this whole act breaks down.

Mr. Ward: If I can just continue, the thrust of what they are saying is, "We want you to tell us what form of job evaluation system we can use." It is being motivated from the premise that they do not want to make an adjustment. Throughout, we have said that the job evaluation systems are up to the employer and must be free of gender bias. It begins there and it ends there and I do not think there is any recourse. The whole presentation was flawed and the premise on which it was based was flawed, but it is not for me to make those arguments or for anybody else.

Mr. Barlow: You are going to drag them into the Pay Equity Hearings Tribunal to make their points at that time.

Mr. Ward: They will not have to go to the hearings tribunal. If they do an analysis and they determine that the jobs are of comparable value, I am sure they will make the payments.

Ms. Gigantes: To answer the question for Mr. Barlow, I wonder if it would help him to understand that under sections 4 and 5, any construction employer who has a brain in his head and a lawyer at his disposal, is going to make sure that the unorganized women staff in his office will be compared to a male, comparable, unorganized job class in the office. That is what sections 4 and 5 do for the employer, so relax. If you are looking after the employer, relax, it is all there in the bill.

Mr. Barlow: That I can understand and I can support that. What I am saying is comparing the unorganized with the organized. That is my argument in this particular case.

Ms. Gigantes: All he has to do is build up a little male job class in his office. By comparing female job classes to that male job class, he has avoided all the application of the cross-bargaining unit or inside and outside a bargaining unit comparison. Do you understand? It has been perfectly designed for your employers.

Mr. Barlow: I can understand that. I can understand your argument if you are interpreting it correctly and I guess the parliamentary assistant--

Ms. Gigantes: The parliamentary assistant does not like to put it that way, but that is what is there. That is why we will not support it.

Mr. Chairman: Do you want to deal with the question from Mr. Barlow with respect to the interpretation being placed on that section by Ms. Gigantes?

Mr. Ward: I do not agree with her interpretation.

Ms. Gigantes: He could not and sit there without blushing.

Mr. Barlow: I intend to oppose that section.

Mr. Ward: What are we going to do?

Ms. Gigantes: I love it.

Mr. Chairman: Shall I call the section?

Subsection 5(5) is what we are at.

Interjections.

Mr. Chairman: We have a number of cross conversations going on. Would you like to have one speaker address the chair and we can continue on with this?

Ms. Gigantes: Under protest, we will support this because it is the only thing anywhere in the bill that at least suggests the possibility of anything close to a cross-establishment comparison, the only hint, and it will not be usable by employees.

Mr. Chairman: All right, I am going to call subsection 5(5).

All those in favour of that clause? Opposed? There are three opposed, so the motion carries. The clause stays.

I think now would be time for a reasonable break; we will say 10 minutes.

The committee recessed at 3:19 p.m.

1537

The Acting Chairman (Mr. Barlow): I will call the meeting back to order again. We have completed sections 5, 6 and 7.

On section 8:

The Acting Chairman: Subsections 8(1), (2) and (3) were carried. I understand Ms. Gigantes might have a request for reconsideration of section 8.

Ms. Gigantes: On the old package of our amendments, the one on page 26 which addresses itself to section 8 has under the careful guidance and with the assistance of legislative counsel has been broken up into parts which fit more easily into the bill. I understand that the government will be supporting some of those amendments.

The Acting Chairman: Excuse me, if I might interrupt, do we have unanimous consent to reconsider section 8?

Ms. Gigantes: We had stood it down.

The Acting Chairman: We stood it down, did we?

Ms. Gigantes: Yes.

The Acting Chairman: My understanding is that it had carried.

Ms. Gigantes: No, we had carried subsections 8(1), (2) and (3), and our sections which I numbered subsections (3), (4) and (5). Subsections (6) and (7) really follow after those. We had agreed to stand those down while we were seeking rewording, which we had.

The Acting Chairman: All right.

Ms. Gigantes: Under section 8 we would withdraw pages 26 and 27, those two pages, as a single amendment. We will insert on section 8, one which you will find in the new amendment package, which we introduced this morning, an amendment addressed to subsection 8(2). At the top right-hand corner you will find "27a NDP." If you consider it in order, I will move it. I am not sure of the numbering, but I will introduce it before you as written. I guess we will have to figure out the numbering afterwards.

The Acting Chairman: Ms. Gigantes moves that subsection 8(2) of the bill be amended by adding thereto the following clause:

"(d) because the person has acted or may act in compliance with this act, the regulations or an order made under this act or has sought or may seek the enforcement of this act, the regulations or an order made under this act."

Ms. Gigantes: The purpose in section 8 is to make sure our enforcement mechanism is one in which the employer shall be constrained,

essentially, not to be intimidating somebody who is looking for the exercise of rights under this act and it includes the enforcement of the act.

Mr. Ward: I want to indicate that the government supports this amendment.

The Acting Chairman: Are there further questions or comments? If not, shall clause 8(2)(d) carry?

Motion agreed to.

The Acting Chairman: Shall subsection 8(2), as amended, carry? Carried.

The next one is subsection 8(4), page 27b.

Ms. Gigantes moves that section 8 of the bill be amended by adding thereto the following subsection:

"(4) The burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (2) lies upon the employer or the person acting on behalf of the employer."

Ms. Gigantes: This is a simple rephrasing of the strictures that exist in the Labour Relations Act, which say that when a complaint is made by an employee that the employer has attempted intimidation, coercion, threats, firings or whatever, the employer shall have to show that the complaint is not based on fact.

Mr. Ward: I will let Ms. Herman respond. I do not have that in my package of New Democratic Party amendments.

Ms. Gigantes: Page 27b of the new package.

Mr. Ward: It is missing from my new package.

Ms. Herman: One of the potential problems with the reverse onus of proof comes under the Charter of Rights, particularly since offences under subsection 8(2) are possible offences under the offences section. Indeed, the government amendment has clarified the offences section to make clear that this is one of the sections that would likely open someone up to an offence.

Ms. Gigantes: Yes.

Ms. Herman: Once there is an offence under subsection 8(2), section 11 of the Charter of Rights applies, which provides for the right to be presumed innocent until proven guilty. It opens it up as an arguable proposition that there may be a problem under the Charter of Rights with reversing the burden of proof.

Ms. Gigantes: The language we have here is similar to the language in the Labour Relations Act and it applies in the same way in the Labour Relations Act, which is that this is behaviour that is opening up the possibility of its being called an offence. As long as we have it in the Labour Relations Act, I think we should make it clear that the same process will be followed in this legislation. If in the future it is decided that this kind of process has to be changed, fine. We will have to change the Labour Relations Act, this act and other acts in which the onus for the burden of

proof lies on the person who has the greatest power in the situation, and that is the employer. I cannot see our being proscribed from using the same language as our existing legislation, the Labour Relations Act, unless we plan to change the process for all our legislation.

Mr. Ward: The concern really is on the basis of a potential charter challenge and you are asking the committee to consider it in the context of another piece of legislation. I cannot comment on or offer to you whether that other legislation that precedes this lends itself to a potential challenge. This is one of the difficulties I have in saying that just because it is in another piece of legislation and it is done that way, it is appropriate. The determination has been made that this kind of phraseology is not appropriate solely on the basis of lending itself open to a charter challenge.

Ms. Gigantes: Let me put it this way: Until such time as we decide that we shall remove from all our legislation any such reference in a case where an offence may be judged to have occurred, and that the reverse onus of proof shall be eliminated, I can see no reason why we should not have it in this legislation. If it is open to challenge, it is open to challenge in a number of pieces of legislation. This wording is directly out of the Labour Relations Act.

Mr. Ward: I do not know whether anybody else has anything to add to that.

Ms. Gigantes: Let me put it this way: The argument in favour of this kind of wording is a pretty understandable argument. It is that the employee who has been harrassed, intimidated, threatened with firing and maybe even fired, is in a position where there has to be an onus on the employers. We know that all too often, employers will try to pressure an employee by any number of means to prevent the employee from exercising rights under labour legislation. I can see no reason why, when we have accepted it until this point in major governing legislation, we should not accept it here.

Mr. Ward: If your point is that this is the case in the way we have worded everything up until this point, why would you interject this clause?

Ms. Gigantes: Because I think that in this case, as with other cases where an employee is subject to intimidation or is vulnerable to intimidation, it is important that employers understand that if they engage in any intimidation practices, they are going to have to attempt to prove that they did not do it, that it is not up to the employee to call witnesses and provide the whole case, although obviously some of that will happen. The employee is in the vulnerable position and that is why the reverse onus of proof exists in our labour legislation. Our Legislature has recognized that. Our courts, up to this point, have upheld it.

Mr. Ward: I cannot assist you in terms of what is in that other legislation. I am really not in a position to argue that. Perhaps legislative counsel wants to offer any input or whatever.

Mr. Revell: I think the issues have been canvassed in terms of the legal ramifications of the provision. It is a policy issue as to whether it should be or should not be in the bill.

Ms. Gigantes: I believe that to be true.

Mr. Ward: Then it will not be in the bill.

Ms. Gigantes: Then let us vote.

The Acting Chairman: Those in favour of this amendment? Opposed?

Motion negatived.

1550

The Acting Chairman: Ms. Gigantes, you are next again.

Ms. Gigantes: I have a subsection 8(5) amendment. I believe it has already been dealt with. Would people feel any happier if I made this amendment to section 8 as subsection 5 than they did when I tried to insert it in section 6?

Mr. Chairman: It will require unanimous consent of the committee to reopen section 8, I believe, or have you dealt with that?

Ms. Gigantes: We are on section 8. The question I am asking the committee is whether, having rejected the content of this amendment in secton 6, it would like to reconsider and see it as an appropriate part of section 8? Considering all that we have been through today--

Mr. Ward: If our position is being sought, our position is not to reopen.

Mr. Chairman: I have an interpretation that because this is similar to an earlier amendment that has been voted on, it is in fact out of order.

Ms. Gigantes: Fine; I accept that. I just thought I would try. You never know when reason is going to strike.

Mr. Barlow: Why do you not challenge the chair?

Mr. Chairman: I am not making comment with respect to the appropriateness of the amendment. I am only talking about the fact that it is out of order.

Mr. Barlow: Now that I am out of the chair, I think you could challenge it.

Ms. Gigantes: We have an amendment, section 8a. It is a new section.

Mr. Chairman: All right. We can carry section 8 then as amended, if you are ready for that vote. All in favour of section 8 as amended? Opposed?

Section 8, as amended, agreed to.

On section 5:

Mr. Chairman: A little bit of housekeeping: We have to close section 5 off, so I will call the vote on section 5, as amended.

Section 5, as amended, agreed to.

Mr. Chairman: We are on section 8a, which is a new section.

Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"8a. Within one year of establishing a new job class, the employer shall file with the commission proof of compliance with this act with respect to the job class and post a copy of the filed material in the work place."

Mr. Ward: This was part of the amendments you tabled today and I request that it be stood down until such time as we have had a chance to--

Ms. Gigantes: Oh, it gives me such hope. Yes, indeed.

Mr. Chairman: Do you agree to stand it down. Okay. Please make a note of that; standing section 8a down.

You have an amendment, Ms. Gigantes, with respect to part II, the heading.

Ms. Gigantes: I think we had better consider that. Can we stand that one down?

Mr. Ward: Sure. We have one we may want to table. Actually, it is one we want to move. Do you want to hear it before you stand yours down?

Ms. Gigantes: Sure.

Mr. Chairman: Ms. Caplan moves that the heading to part II of the bill be amended by striking out "Broader" in the first line.

Ms. Caplan: It would read "Implementation: Public Sector and Large Private Sector Employers."

Mr. Baetz: Can the parliamentary assistant tell us what--

Mr. Ward: As a result of the roll-in of Bill 105, it is no longer "broader public sector"; it is "public sector."

Mr. Baetz: There is nothing Trojan Horse about it?

Ms. Caplan: Nothing.

Mr. Baetz: Okay.

Mr. Barlow: Was there not some concern expressed from some of the smaller municipalities, although I do not have--I am not prepared to debate that right now.

Mr. Ward: The concern that was expressed by municipalities in general terms was a concern that they would be covered by the provisions of Bill 105. I think it is fair to say that during the course of the presentation that was made, among their other concerns was the fact that the preference was clearly a leaning towards legislation that was embodied in Bill 154 as opposed to Bill 105. I really do not think there is any difficulty for municipalities in general terms being covered by this single piece of legislation. They would have been concerned had they been covered by Bill 105.

Mr. Barlow: Did the small rural townships that may only have eight or 10 employees not have a concern?

Mr. Ward: They had general concerns that many other employers have expressed in terms of the requirements of the preparation of plans and the implementation. This is something that has been recognized and it is also something that they can effectively deal with through their own mechanisms and through their own associations in conjunction with the role of the commission with its two distinct functions. Really, I do not think what was being sought was an exemption from the bill.

Mr. Barlow: Would these small rural municipalities fall under the same guidelines? What would be the year of implementation?

Mr. Ward: It would be the same for them as for everybody else in the public sector.

Mr. Barlow: In the public sector. They would not have a phase-in period because of the number of employees.

Mr. Ward: No, I think it is fair to say that they have the resources to comply and I think that anybody on this committee who has been experienced in the municipal sector--

Mr. Barlow: You were a township councillor; I was not. I was a city councillor. You were township. When the small township comes to you, would you simply say: "Oh, just increase your taxes. The Attorney General suggests it is a good idea"?

Mr. Ward: Frankly, I do not see that they have a problem.

Mr. Barlow: You might get us on your side yet, Ms. Gigantes.

Ms. Gigantes: I am not holding my breath.

Mr. Baetz: Do not be so pessimistic.

Mr. Ward: I do not believe that even the smallest municipality has a problem in compliance.

Mr. Baetz: It will all be adjusted in the transfer payments.

Mr. Ward: I am out in rural Ontario every time I go home, so I will leave it at that.

Mr. Baetz: At the top of page 6 of the bill, where we refer to the "employer," do we still mean "an employer in the broader public sector or in the private sector"? Has that been changed in the light of what--

Ms. Caplan: That will be changed. It will be done under section 1. We have not done section 1 yet.

Mr. Baetz: It will be picked up then as we go back. All right.

Mr. Chairman: If there are no further questions with respect to the change in wording of the title of part II of the bill, I will call the vote on it.

Mr. Ward: Just in terms of the part II title, you had asked for it to be stood down, but I think it is okay.

Mr. Chairman: For those of you who are interested, the Jays are leading seven to three. I have another score if you would like one.

Mr. Ward: Okay, what are the Tigers doing?

Mr. Chairman: The score in the bottom of the eighth for the Tigers and New York is one to one.

Now, back to the serious business at hand. Are you ready for the vote on the part II title? All those in favour of the title, as amended?

Motion agreed to.

On section 9:

Mr. Chairman: You have an amendment on section 9, or a recommendation, if you will.

Mr. Ward: Ms. Caplan has the section 9 amendments and I believe she is going to speak to them.

Ms. Caplan: There is no actual amendment.

## 1600

Ms. Gigantes: Would it be appropriate to have a discussion of why the government intends to remove the expression "mandatory posting date"?

Mr. Chairman: Ms. Caplan, do you want to take this?

Ms. Caplan: We heard from several deputants, including the Council of Ontario Universities, the Ontario Public School Trustees' Association and the Association of Municipalities of Ontario, as well as others, who will be required to negotiate several plans with a number of different unions. They were concerned that, to have that done and completed fully within one year, which was the mandatory posting date, would be extremely difficult. In fact, they were saying the second year after the mandatory posting would be wasted time. They would prefer to have that additional time for negotiations so they could come up with the best possible plan.

There is no suggestion of moving the implementation date: that would still be the requirement for payout. The suggestion of changing the mandatory posting date or deleting the term would allow the two years for the development and the negotiation with the various partners. There would be some impetus to have that plan posted as early as possible, given the size of the establishment and the complexities, and have that done before the effective payout date, which is still two years.

There is no suggestion of changing that date. It does recognize the reality, particularly for some of the large employers who came before us and said, "We would like a little more time, particularly because we are negotiating with several unions." The suggestion here is that there still will be a requirement for posting, but we will not have a mandatory posting date, because we have heard from so many that they would have difficulty meeting that date. It allows them the additional time through that second year to

post, and then they are still required to make the payout as of the payment adjustment date, which is not changing. That was about it.

Ms. Gigantes: I do not quite understand, because there is still reference in the bill, even if you remove the reference to "mandatory posting date," to the date in which the plan is posted, so that means any time within the first two years.

Ms. Caplan: Yes. It will vary, given the size and the nature of the establishments and how early they will be able to post. It does give them that flexibility and it does not remove the date on which they must begin the payouts or the retroactivity to that date.

Ms. Gigantes: Yes, but it does mean there is a potential for a plan to be posted at month 22, which means that you will be into adjustments under the plan at a point when a bargaining agent or employees might decide that there are problems with the plan.

Ms. Caplan: The point I heard, and the one we are responding to, is that where they have a bargaining agent, the negotiations will have the time required, so that by the time the plan is posted, they will not need the time for further negotiations because it will be done. When the plan is set, it will have been agreed to by the bargaining agent. Where there is no bargaining agent, it would be in the interest of the employers to get that plan set as quickly as they could, to allow for the time before the payout starts, so they will not be hit with retroactivity to that implementation date.

I think your fears are unfounded. This is just responding to the reality of those who will have several unions with which to negotiate.

Ms. Gigantes: Can you explain what benefit there is to an employer to getting an equal pay plan up quickly?

Ms. Caplan: Because of the opportunity for complaint or questions about the plan, if there is no bargaining agent it is in their interest to get it done. If not, they are going to have the complexity of retroactive payments, so there is that incentive to get the plan done as quickly as possible.

For those who have bargaining agents, the additional time to negotiate a plan and have it done was requested to allow them that flexibility to make sure they end up with the best possible plan without having to end up at the Pay Equity Commission. What could likely happen—and this was the other thing we heard—is that if we do not give them the additional time to negotiate, you will end up with more plans going to the Pay Equity Commission than you would need to have.

If they cannot agree within one year, whatever they have got in the one year goes, and the Pay Equity Commission makes the decision, whereas we are hopeful that they will be able to negotiate a plan with their bargaining units that will be acceptable and have that done and say they are going to have the payments start on the adjustment date.

Ms. Gigantes: Are you talking about one big equal pay plan in an establishment where there are many bargaining agents?

Ms. Caplan: There will not be one big plan. What will happen is that they will be negotiating separate plans with the different--

Ms. Gigantes: That is right.

Ms. Caplan: So there will be different dates at which they complete the process. This just adds a little flexibility so they will be able to get that done.

Ms. Gigantes: Can you tell me why, in a situation where there is no bargaining agent, it is to the benefit of the employer to get an equal pay plan up in place as early as possible when, in fact, there is no retroactivity under this legislation? The cap is one per cent of total payroll per year. I cannot see any benefit for an employer to move ahead.

Ms. Caplan: There will be retroactivity from the implementation date. In the broader public sector, two years--

Ms. Gigantes: But that does not mean anything.

Ms. Caplan: It does, because, having come from a large municipality dealing with several public sector unions--

Ms. Gigantes: We are talking about a nonorganized work place, please.

Ms. Caplan: I am saying that in the broader public sectors, you find that they are primarily unionized, as opposed to having establishments that are nonunionized. Most are, and within an establishment, there may be a nonunionized unit, which usually follows. After they have agreed with the union, that is the model.

Ms. Gigantes: But we are not removing the mandatory posting date just for organized workers or just for establishments where there is a bargaining agent. We are also removing it for establishments where there are no bargaining agents.

Ms. Caplan: The reality is that in the broader public sector and the largest of the employers of over 500, the overwhelming majority are unionized, and we are responding to that fact.

Ms. Gigantes: Yes, but the mandatory posting date does not apply only to them. It applies to a whole phased list of employers represented by different establishment sizes.

Ms. Caplan: We are dealing with part II, broader public sector and large private sector employers.

Ms. Gigantes: Yes, but you are removing it throughout the bill. You are removing mandatory posting dates from the bill, period.

Ms. Caplan: This was to respond to the cases that were brought forward, and I mentioned they were primarily the large public and private sector ones. We will be able to see within the first two years of the bill how that works. We think it will be more effective.

Ms. Gigantes: But we are removing it for all places of employment with plans, on behalf of the public sector and the large private employers. I can understand, and perhaps you can help us understand too. In the public

service itself, the employees of the government of Ontario, when would you expect, having had your previous experience with Management Board, it would be possible to post equal pay plans?

Ms. Caplan: Given the size and the nature of the Ontario public service, I think it would require more than one year to be able to have negotiated fully its plan with the Ontario Public Service Employees Union and the Canadian Union of Public Employees.

Ms. Gigantes: Do you not think that in most organized work places--

Ms. Caplan: I think it would be very difficult to do it within one year-

Ms. Gigantes: It is possible.

Ms. Caplan: --because they are going to be negotiating, but I think they will be able to do it within two years.

Ms. Gigantes: Do you not think that in organized work places, that is, the public sector, most of which is organized, and the large private sector, some of which is organized, where there is a bargaining agent, the bargaining agent would agree to a postponement of a posting? Would that not be a better way of going about it? Otherwise, we are inviting all employers to take up to two years to provide a plan for employees to look at, including the employers of unorganized workers.

Ms. Caplan: No, I do not agree. Given the representations we have heard and not only the knowledge I have of the Ontario public service but also what I have seen in a large municipality with several bargaining units and bargaining agents as well as nonunionized groups, it seems to me that this is a far more flexible and reasonable approach to it.

## 1610

Ms. Gigantes: Do you not think that the bargaining agents in the two areas you have described would agree to a postponement of the effect of a mandatory posting date?

Ms. Caplan: If you set it up with the expectation that you are asking someone to do something that you know in advance is going to be extremely difficult, then you are setting up the opportunity not to succeed, whereas if you place a reasonable expectation at the beginning by saying: "We are not going to ask you to do the impossible. We recognize that you are going to require the time for negotiations, but you are still going to have to pay out as of the same date," the incentive is there to get it done. No one is suggesting that be changed.

Ms. Gigantes: But one per cent of payroll, and anybody who has a significant equal pay gap is going to have to pay that anyhow.

Ms. Caplan: It is as of that date.

Ms. Gigantes: And that is the limit.

Ms. Caplan: I think the legislation should reflect what is possible and doable as opposed to--

Ms. Gigantes: I do not think you understood the context of my question. The problem you have described is a problem I cannot understand. I wonder about the best way of dealing with that problem. You are proposing that we get rid of the mandatory posting date in all the establishment-size, phase-in mechanisms. I am suggesting to you that where you have multiple bargaining agents or where you have terribly complex situations with one bargaining agent, such as the Ontario Hospital Association bargaining with hospital workers, something like that, if you said instead that where the bargaining agent or agents agree with the employer, the mandatory posting date might be deferred, that would seem to me to be a more reasonable approach.

We have these mechanisms in the bill for the deferral of the posting date where there is agreement, do we not? Am I recollecting something that is not there?

Ms. Caplan: You have to apply formally to the commission. It just seems to be layering on--

Ms. Gigantes: But what you are doing is throwing out the whole mess of it because--

Ms. Caplan: I do not agree that you are throwing out anything. You are still requiring posting in which you are recognizing that there will be different times at which employers can respond to this. I think we are being sensitive--

 $\underline{\text{Ms. Gigantes:}}$  What you are saying is that nobody will post an equal pay plan for two years.

Ms. Caplan: What we are saying is that in some cases within those two years they will be posted at different times as they are completed with the different bargaining units. That is what we are saying: it will be at different times.

Ms. Gigantes: We have had our discussion.

Ms. Caplan: I think it is clear.

Mr. Chairman: Are there any other questions or comments? It will be stood down, then. Is that agreed? We do not need to vote on it.

Ms. Gigantes: We shall be voting on the same issue when the first amendment comes up that links to the mandatory posting.

Mr. Chairman: That is the next one.

Ms. Caplan: The move is to strike out section 9. We will then deal with the amendment I put to deal with whether we will strike out 9.

Mr. Chairman: We cannot do that until we deal with the other one, though.

Ms. Caplan: Which other one? We might as well deal with it before we proceed, one way or the other. Again, I think this just recognizes the reality; they are not going to be able to do it recognizing it in advance.

Mr. Chairman: Do you want to go to the first amendment on section 9 then, which is your amendment, Ms. Gigantes?

Ms. Gigantes moves that section 9 of the bill be struck out and the following substituted therefor:

"9. In this part, 'mandatory posting date,' means the first anniversary of the effective date."

Ms. Gigantes: The effect of that amendment would be that in all the establishments in which an equal pay plan was required under this legislation, such a plan would be posted within a year of the passage of this bill.

Mr. Chairman: Effectively then, in section 9, that would be deleting the caveats built into clauses (b), (c), (d) and (e).

Ms. Gigantes: That is correct.

Mr. Chairman: I have a problem about the appropriateness of that amendment.

Interjections.

Ms. Gigantes: Not necessarily. In conjunction with the payout schedule, it would accelerate the payouts, but it is a separate and discrete item, as I read it. It simply says that the plan has to be posted within a year of the passage of the legislation. It does not say what the payout under the plan has to be.

Mr. Chairman: Yes. There is some suggestion that if we stood down section 9, as I suggested earlier, we might not need it or we could come back to it.

Ms. Gigantes: That is fine with me.

Mr. Chairman: I want you to think about this as a committee because I may give you the opportunity to rule on it. My rulings are consistent. If anything expands the scope of the bill and is more than a modest expansion of the scope of the bill, then I have to rule it out of order because only the government is in a position to put that before a committee. I know committees have altered and amended bills in the past, but in a very limited way. If it increases the cost to government, accelerates the payout, then I am very uncomfortable with it.

I do not mind deferring to our legislative counsel on this or to the clerk of the committee, but I have some discomfort with the amendment. Having said that, why do we not stand it down?

Ms. Gigantes: That would be just dandy.

Mr. Chairman: Let us go then to--

Ms. Gigantes: I do not want to leave you in unnecessary discomfort.

Mr. Chairman: Right, and I knew that you did not want to do that.

Mr. Ward: Mr. Chairman, this is similar to another situation we had where, in fairness, your ruling would be in all probability technically

correct. It may or it may not be. The preference is that this issue be voted on.

Mr. Chairman: Yes, we have done that in the past if the parliamentary assistant felt fairly certain of the numbers related thereto.

Mr. Ward: No, I think it goes beyond that. It really does. I am not at all certain of the numbers thereto.

Ms. Gigantes: Are we standing it down or not?

Mr. Ward: To what extent this is an expansion of the bill is really open to some question.

Ms. Gigantes: Yes, it is. I am quite happy to stand it down. I think that probably the more relevant issue to debate is the phase-in of the payments, so I am quite happy to stand that down and come back to it, if there appears any possibility that we can get a change to the phase-in.

Mr. Ward: We will come back to it. Let us get some movement on--

Mr. Chairman: Okay. Are we agreed to stand it down?

There is a new section 10a to follow section 10. Again, Ms. Gigantes, it is your motion.

Ms. Gigantes: Am I right in thinking that subsections 10(1) and 10(2) would come before section 10a?

 $\frac{\text{Clerk of the Committee}}{1}$ : Section 10 was carried in its entirety on

Ms. Gigantes: We already did those?

Clerk of the Committee: Yes.

Ms. Gigantes: I had not marked them. I am sorry about the confusion.

Mr. Chairman: This will be a new section.

 $\underline{\text{Ms. Gigantes:}}$  I move that the bill be amended by adding thereto the following section:

"lOa. In addition to the employers referred to in subsection 10(1), this part applies to every employer in the private sector who has 10 or more employees, any of whom are represented by a bargaining agent."

Mr. Chairman, I am going to withdraw that amendment. It is not phrased the way I want it. Forgive me. If I can, I will seek permission later to open up the discussion of section 10a. My intent had been to have the amendment read that where there was a bargaining agent, we would have plans.

Mr. Chairman: All right. You want to bring in a revised wording?

Ms. Gigantes: Please.

On section 11:

### 1620

Mr. Chairman: Ms. Caplan, do we have a government motion on section 11?

Ms. Caplan: Yes.

Mr. Chairman: Ms. Caplan moves that section 11 of the bill be amended by striking out "before the mandatory posting date."

Ms. Caplan: I explained the rationale and reason for that when we discussed section 9.

Mr. Chairman: Is there any comment on the deletion of those words? It is up to the first comma. "Before the mandatory posting date," would be deleted. Do you have any concerns that you wish to express? If not, I will call the motion. All in favour of the amendment on section 11? Opposed?

Motion agreed to.

Mr. Chairman: That is carried, but everyone did not vote. Even if you twitch your ear a little bit, I will know you are there.

Ms. Gigantes: Perhaps we should finish section 11, and then I will ask to come back to section 10a.

I move that the bill be amended by adding thereto the following section:

."lla. On the date on which the plan is posted and for every year that the equal pay plan is established under section 12, every public sector employer shall notify the commission of the amount of money required to establish the pay equity fund and these amounts shall be paid to the employer out of the moneys appropriated therefor by the Legislature."

Interjection.

Ms. Gigantes: I have made a mistake again. I should have moved a whole other section first.

Mr. Chairman: Yes. Let us move back. I will let you go to that new section in a moment. Let us move back to section 11, because this is a new section 11 or an addendum to section 11, on page 32 of the New Democratic Party amendments.

Ms. Gigantes: I beg forgiveness, committee members.

Mr. Chairman: Ms. Gigantes moves that section 11 of the bill be struck out and the following substituted therefor:

- "ll(1) On or before the date on which the pay equity plan is posted, each employer whose pay equity plan indicates the need for equal pay adjustments shall establish an equal pay fund by setting aside one per cent of the total payroll for the 12-month period preceding this date or the amount needed to achieve equal pay according to the plan, whichever is less.
- "(2) For every year that the pay equity plan is established under section 12, the employer shall add a minimum of one per cent of the total payroll of the previous year to the pay equity fund.

- "(3) Every employer shall be deemed to hold the accumulating pay equity fund in trust for the employees to whom the plan applies, whether or not this amount is kept in a separate account.
- "(4) The pay equity fund is a charge upon the assets of the employer that in the ordinary course of business would be entered into the books of account, whether actually entered or not.
- "(5) Moneys in the fund shall be allocated directly to the achievement of pay equity according to the pay equity plan."

Mr. Charlton: What about subsection 6?

Ms. Gigantes: We are going to vote on subsection 6 separately. The purpose of these amendments is to establish that the fund out of which pay equity adjustments will be made is a separate fund, that the fund shall be built up on a retroactive basis and that the fund shall be held in trust for the employees who have the right to receive pay equity adjustments. You will notice that I am trying to use the phrase "pay equity," which sticks on my tongue but which is now embedded in the legislation.

First, it is out of concern that the problem of unfair wages for women be addressed quickly that we have suggested that the fund be retroactive. We want to make sure that employers and employees know that the fund is a separate account and that the fund shall be held in trust for employees to whom benefits shall accrue under this legislation.

I would be happy to answer any questions.

Mr. Baetz: On a point of order, Mr. Chairman: In view of the fact that we are nudging ever closer to the matter of a fund for the public sector—and I realize we are not on that one right now—and in view of the fact that I have very urgent business in my riding and must leave at 4:30, I wonder if you and the committee would agree not to get into that discussion, debate and motion until tomorrow, or whenever; at least not in the next hour because I must leave now.

Mr. Chairman: I think we can work around it. I do not see any problem. Are there any objections on the part of committee members? If we get nodded concurrence, that is all I require and then we will informally work around it in some fashion and allow Mr. Baetz to participate in that debate. Is that agreed? Agreed.

Mr. Baetz: Thank you. I appreciate that.

Mr. Chairman: That is fine. Have a good flight or a good drive or whatever it is you will be doing.

Are there any questions of Ms. Gigantes with respect to the five proposed subamendments she has under section 11?

Ms. Gigantes: Mr. Chairman, I will ask the committee if we can vote on these subsections separately.

Mr. Chairman: That is reasonable. We can do that. Some may stand, some may not.

Let us go back to subsection ll(1). Are there any comments with respect to subsection ll(1)?

Mr. Barlow: The only comment I have is that I will not support it.

Ms. Gigantes: Then let us have the vote.

Mr. Chairman: We are voting on subsection ll(1). All those in favour please so indicate. Opposed? Lost.

If you want to stop me, raise your hand, otherwise I am going to call the vote. Subsection 11(2), all in favour? Opposed? Lost.

Subsection 11(3). All in favour?

Ms. Gigantes: Surely you will support that, that the funds should be held in trust?

Mr. Barlow: We do not have a fund.

Ms. Gigantes: You will have a fund under the legislation.

Mr. Barlow: Under your first amendment we would have had a fund. Is that not right?

Ms. Gigantes: No, there will be a fund in any case. Where there is pay discrimination established in an equal pay plan, the employer will know perfectly well that he has to make a payout of a minimum of one per cent under this legislation. What we are saying is that the employer should accumulate that in a fund which is placed in trust.

Ms. Caplan: The legislation states that the obligation of the employer is to set aside the payouts under the pay equity legislation, one per cent a year. There is no suggestion that it be in a separate fund anywhere and, in fact, just be a charge against the books.

 $\underline{\text{Ms. Gigantes:}}$  It is pretty important that we establish it had better be a separate fund.

Ms. Caplan: I can tell you, for example, within the Ontario public service it is a draw against the consolidated revenue--

Ms. Gigantes: Amend it then.

Ms. Caplan: --and separate funds are not established within the broader public sector and large sector. As long as it is mandatory under the bill that it be one per cent, I do not think a separate fund is required.

Mr. Chairman: Who would be checking on this to see that it is set up in a separate fund?

Ms. Gigantes: Any complaint that it was not would go to the commissioner.

Mr. Chairman: What is the difference between that and a company bank account, such as the consolidated revenue fund for the province?

Ms. Gigantes: With the consolidated revenue fund we have the

political accountability that exists through the Legislature. With further amendments we would have the same kind of accountability in the full public sector. That is not true in private establishments. We want to make sure that when the payout is supposed to occur the money is there.

Mr. Chairman: Let us assume that you are dealing with the bad situation: the employer who is going broke, playing games, not paying his staff, or who is going to pick up his operation, run away, close it down, lay off employees or whatever. In that kind of a situation, the same thing as you are talking about in your separate trust fund could just as easily happen in the consolidated fund of the company, the corporate bank account, in effect.

Ms. Gigantes: Yes, it could, especially given the fact that we did not pass the bad apple provision in subsection 6(1). Nevertheless, I feel it would be helpful to employees. If there were a fund set up in trust, they would know that, and if it were not set up in trust, they could go to the Pay Equity Commission and say, "It is not set up in trust." It is a very simple matter, it seems to me: a fund in trust is in trust.

Mr. Polsinelli: Might this be an appropriate moment for a five-minute break?

Mr. Chairman: We are in midstream. Did you want to break at this point or when we complete the section?

Mr. Polsinelli: At this point.

Mr. Chairman: I assume you have a reason for that.

Mr. Polsinelli: Mr. Chairman, you always make assumptions.

Mr. Chairman: It is fine with me if you wish to have a break at this time.

Ms. Gigantes: It seems like a strange place to have a break. Mr. Polsinelli may be able to explain to us why it is necessary at this precise moment in time.

Mr. Polsinelli: I would like to have some discussion with the parliamentary assistant.

Ms. Gigantes: In that case, I would be quite happy to have a break.

Mr. Chairman: I think that is reasonable. Whenever there may be something meaningful come out of a break, I am completely in favour of it.

Interjection: You can always take the advantage of having a smoke while you are out.

Mr. Chairman: Not being one who partakes of the devil weed, what can I say? Other than during every break.

We have defeated subsections 1 and 2. We are on subsection 3, and will with it further when we come back.

The committee recessed at 4:31 p.m.

Mr. Chairman: Do you wish to carry on, Mr. Polsinelli?

Mr. Polsinelli: No, I am prepared for the vote.

Mr. Chairman: I will call subsection 11(3) if there are no further comments on it. Those in favour? Opposed? That is lost.

Comment on subsection 11(4)? Those in favour? Opposed? Lost.

Subsection 11(5)--

Ms. Gigantes: There is no point.

Mr. Chairman: I have to have a vote on them anyway. On subsection 5, those in favour? Opposed? Lost.

Motion negatived.

Mr. Chairman: Do you wish to deal with subsection 6 separately?

Ms. Gigantes: We have separated out what was called 6 on page 33 of our previous package. It is now called section lla in the new package of amendments and it is the section that Mr. Baetz requested we delay votes on.

Mr. Ward: I think he also wanted to be part of the debate.

 $\underline{\text{Ms. Gigantes}}$ : I suggest that we leave that aside until Mr. Baetz reappears.

Mr. Chairman: All right. In any event, I will check further, but--

Ms. Caplan: It is out of order.

Mr. Chairman: I believe it is out of order and requires a minister's recommendation.

Mr. Charlton: It is not out of order until we move it.

Mr. Chairman: I am only suggesting.

Ms. Gigantes: I would like to return to section 10a, which is numbered in our new package of amendments by "31a" at the top of the page, above "NDP." My scrambled brain did not realize that in fact this amendment, when I moved it earlier, was perfectly correct, and I will reread it, if I may.

Mr. Chairman: Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"lOa. In addition to the employers referred to in subsection 10(1), this part applies to every employer in the province who has 10 or more employees, any of whom are represented by a bargaining agent."

Ms. Gigantes: That effectively means that in the private sector, any employer who is covered by this legislation would be called upon to produce an equal pay plan if there were a bargaining agent in the establishment.

It seems to me reasonable that, where there has been a history of labour-management negotiations in an establishment, it would be quite a

natural phenomenon for those labour-management negotiations to be continued around the free issue of an equal pay plan. We have within the existing bill a section which is supposed to provide an encouragement to employers with fewer than 100 employees to create a plan. We would like to see that there is an obligation inference where there was a collective agreement before.

Mr. Chairman: I think the amendment is clear. Any comment or further questions?

Ms. Gigantes: One other point I could make is that the number of employees we estimate would benefit from this new subsection would be approximately 60,000 who are organized in the private sector. Actually, it would be less than that.

Mr. Chairman: Those would be the employees in firms of from 10 up to 99?

Ms. Gigantes: That is what we are discussing in this amendment. In fact, in all the private sector there are about 60,000 women who are organized, so it would not be an addition of a great number of female employees to the ranks of those for whom an equal pay plan would be created, but it would at least offer some benefits to them.

Mr. Ward: Just so that we can be clear, the purpose of this is to extend an obligation on the part of employers of 100 to 10--

Ms. Gigantes: Yes, where there is a bargaining agent.

Mr. Ward: --to a proactive kind of mechanism as opposed to a complaint-based system and it would include all employees whether or not they were represented by the bargaining unit, if there were any collective bargaining people within that.

Ms. Gigantes: Yes.

Mr. Ward: I think it could be argued, and I think it has been argued previously by the chairman, that in terms of the fact that there might be administrative costs to this, it could be deemed to be out of order, but on those clauses where the costs have been related strictly to the administrative aspect of it, we have concurred that they can be voted on. We do not support this but we do not think it is necessary to rule it out of order. That was part and parcel of the discussion before.

Ms. Gigantes: Can you tell us why you would not support it?

Mr. Ward: We are satisfied that in terms of the proactivity, it is limited to those employees in large establishments of 100 and more employees. We have made that case consistently throughout the consideration of this bill.

Mr. Chairman: I will call for section 10a, the new section. All those in favour of the amendment? All those opposed?

Motion negatived.

Mr. Chairman: Do we now have to move all of section 10, as amended?

Interjection: This was a separate section; section 10 carried.

Mr. Chairman: Okay, this was a new section that did not carry, so we do not have to do anything with it.

On section 12:

Ms. Gigantes: I believe we have the first amendment which members of the committee can find on page 34 of the original New Democractic Party amendment package. I will not read the final printed clause, as that matter has already been voted on.

Mr. Chairman: Could I ask the committee's indulgence on clause (g), which is the last provision. Again, there is an acceleration clause there.

Ms. Gigantes: I just said that I would not read that clause and that we will withdraw clause (g) as it has already been voted on.

Mr. Chairman: Okay. Sorry. I did not hear you say that, and that was the reason I wanted to call your attention to that clause. You want to speak to everything with the exception of (g).

Ms. Gigantes: That is correct.

## 1650

Mr. Chairman: Ms. Gigantes moves that subsection 12(1) of the bill be struck out and the following substituted therefor:

- "(1) Documents, to be known as pay equity plans, shall be prepared to provide for the achievement of pay equity in the establishment and,
  - "(a) shall identify the establishment to which the plan applies;
- "(b) shall set out programs designed to achieve pay equity in the establishment, which may include any or all of the following methods,
- "(i) in establishments where employees are represented by a bargaining agent, a program of negotiated direct amounts allocated to redress pay inequity,"--

Ms. Gigantes: That would have to be reframed in terms of the application only to those establishments over 100 employees.

Mr. Chairman: --"(ii) equalization of base entry rates,

- "(iii) the comparison of benchmark jobs,
- "(iv) a program of comprehensive or partial job evaluation,
- "(v) increasing minimum wage rates,
- "(vi) in establishments where employees are represented by a bargaining agent and the establishment is over 100, co-operative wage studies,
  - "(vii) any other measures to achieve equal pay;
- "(c) shall provide for an examination of all existing classification or compensation systems used in the establishment in order to identify gender-based discrimination;

- "(d) shall identify female and male jobs in the establishment according to current and historical incumbency, stereotypes of fields of work and other factors that may be applicable, such as the incumbency predominance test;
- "(e) shall include information on rates of pay and occupational categories in the establishment and the number of women and men in each category and information on all compensation systems;
- "(f) shall provide that a minimum of one per cent of total payroll of the previous year shall be added for each year that the plan is established and allocated directly to the achievement of pay equity."
- Ms. Gigantes: Mr. Chairman, I think you will understand the sections in which we would have to modify the wording of these subclauses. The key element in the amendments that we are proposing here is that we are suggesting there should be full information available to employees who have the right to have an equal pay plan so that they can evaluate the adequacy of the equal pay plan, and second, that the employees and the employer shall consider any of the methods that are identified in clause (b) as possible parts of the equal pay plan. There would be a flexibility, in other words, in determining what methodology would be used within the context of a pay equity plan to reach the goal of pay equity.

I will be happy to answer any questions.

Mr. McLean: I would like to hear the parliamentary assistant's comments on the presentation and on some of the sections.

Mr. Ward: In fairness, I guess neither Mr. McLean nor Mr. Pierce was here during the many discussions we had earlier on, when we dealt at the outset with some of these issues. These issues have been debated in other sections of the bill, by and large, and it was determined at that time by the committee in its subsequent votes that in fact these premises would not be supported. I do not know whether it is necessary for me to reiterate the full arguments, but again, what the bill is doing is by way of comparisons between female and male job clases rather than by dealing with increases in the minimum wage or base entry rates. That is how the bill works.

 $\underline{\text{Mr. Chairman:}}$  All right. If you are ready for the vote, I will call the vote on subsection 12(1).

Ms. Gigantes: Can I ask a question of the parliamentary assistant? If the government's own employees, or in fact other employees in the public sector, come together with the employer and decide that as part of the process of creating an equal pay plan they want to use any or all of the methods that have been touched upon within the body of these subsections. Are you intending to say that cannot be done that way?

Mr. Ward: No.

Ms. Gigantes: Then why not approve it?

 $\underline{\text{Mr. Ward}}$ : Because we are not intending to dictate that it be done that way.

Ms. Gigantes: There is no dictation involved in this proposal. It says "may include any or all of the following methods." It is suggestive.

Mr. Chairman: Is there anything further on the proposed amendments to section 12? I am going to take them as a block and vote on them in one group unless you ask for it to be done differently.

Ms. Gigantes: I would like to vote separately, Mr. Chairman.

Mr. Chairman: We can do that. Some of them sort of hang together. That is the only thing.

Ms. Gigantes: When I say "separately" I mean, for example, clause 12(1)(b). If the parliamentary assistant says that any of these methods could be included in the body of an equal pay plan, I do not know why he would vote against it.

Ms. Caplan: For clarification for Mr. McLean, because I think it is relevant to the question he asked, the bill as it stands now is permissive for the bargaining agent and the employer to negotiate the methodology they feel is most applicable. The test is that it be nongender-biased, whatever they decide upon. You have left the parameters open.

The concern is that if we set them in the legislation, the assumption will be that you must use these. Even if the assumption is that you may use these, it will perhaps hamper the negotiations that will flow from that. We feel the legislation as it stands now is permissive and allows for methodology to be determined between the employer and the bargaining agent or for the employer to determine the methodology if there is no bargaining agent. It is just a difference of philosophy.

Mr. McLean: That is why I was questioning clause (d). That explains it.

Mr. Chairman: Shall we proceed? I will call clause 12(1)(a) and then I will go to 12(1)(b) including all its subclauses, and then clauses (c) through (f).

All those in favour of clause 12(1)(a)? Opposed? Lost.

All those in favour of clause 12(1)(b)? Opposed? Lost.

All those in favour of clause 12(1)(c)? Opposed? Lost.

All those in favour of clause 12(1)(d)? Opposed? Lost.

All those in favour of clause 12(1)(e)? Opposed? Lost.

All those in favour of clause 12(1)(f)? Opposed? Lost.

Clause 12(1)(g) is not being dealt with.

Motion negatived.

Mr. Chairman: Shall subsection 12(1) carry? Carried. Now subsection 12(2).

Ms. Caplan: We have amendments to clause 12(2)(c) and subclause 12(2)(e)(i).

Mr. Chairman: Ms. Caplan moves that clause 12(2)(c) of the bill be amended by striking out "(2)" in the third line.

Ms. Caplan: Subclause 12(2)(e)(i) was moved by the Attorney General when he was here. "Subclause 12(2)(e)(i) of the bill be amended by striking out 'broader' in the second line."

 $\underline{\text{Mr. Chairman:}}$  We will deal with the two of them together. They are basically technical in nature.

## 1700

Ms. Gigantes: We have another amendment to subclause 12(2)(e)(i), but we would be happy to move it after that is dealt with.

Mr. Chairman: I will take clause 12(2)(c) and subclause 12(2)(e)(i) together, if that is appropriate, the two that Ms. Caplan has moved. Is it clear what we are voting on?

Ms. Caplan moves that clause 12(2)(c) of the bill be amended by striking out "(2)" in the third line. Ms. Caplan further moves that subclause 12(2)(e)(i) of the bill be amended by striking out "broader" in the second line.

If we do not have concurrence on what we are going to do by way of approval, I will split them, but I think we do. They are both Mr. Scott's motions. I will call them both together.

All those in favour of the two amendments?

Amendments agreed to.

Ms. Gigantes: I have two amendments which are alternative amendments. Actually, there are three amendments. Essentially, what we are proposing in the three amendments, which you will find in the new package circulated today, are different ways of dealing with the question of phasing of payouts to female employees under pay equity plans.

If I could outline in a broad sense what these amendments address--I know one is supposed to move amendments first and then speak to them, but I would like to deal first with the motion that reads as follows, affecting subclauses 12(2)(e)(i) and (ii)

Mr. Chairman: Ms. Gigantes moves that subclauses 12(2)(e)(i) and (ii) of the bill be struck out and the following substituted therefor:

"(i) the second anniversary of the effective date, in respect of employers in the public sector and in respect of employers in the private sector who have at least 500 employees on the effective date."

Ms. Gigantes further moves that subclauses 12(2)(e)(iii), (iv) and (v) of the bill be struck out and the following substituted therefor:

"(iii) The third anniversary of the effective date in respect of all other employers to whom this part applies."

Ms. Gigantes: Essentially what we are trying to suggest here is that we should have a collapsing, as it were, of the phasing in of equal pay payments. In terms of the public sector, we are proposing no change in that phase-in proposed in the bill. The moneys that were due to female employees in the public sector, whether they are public service or what the government

calls the broader public sector, would occur on the second anniversary of the passage of this legislation.

What we are proposing in the first amendment which I have just presented is that along with public sector employers, those employers in the private sector who have 500 or more employees would also make their first payouts as required, if required by equal pay plans, on the second anniversary of this legislation.

The associated amendment, which I have presented, is that on the third anniversary of the passage of this legislation, all employers in the private sector of fewer than 500 employees, who must make payments under equal pay plans, would make their first payments.

Mr. Chairman: Questions and comments?

Ready to vote? Separately?

Ms. Gigantes: Sure.

Mr. Chairman: We will take the first one. All those in favour of subclauses 12(2)(e)(i) and (ii)?

All those opposed?

Motion negatived.

Mr. Chairman: All those in favour of subclauses 12(2)(e)(iii), (iv) and (v)? Opposed?

Motion negatived.

Ms. Gigantes: I wonder if government committee members, even though they have just voted against that proposal to collapse the payouts, might consider a further proposal we have made as an alternative.

Mr. Chairman: Ms. Gigantes moves that subclauses 12(2)(e)(iii) to (v), inclusive, of the bill be struck out and the following substituted therefor:

- "(iii) the third anniversary of the effective date, in respect of employers who have at least 100 but fewer than 500 employees on the effective date,
- "(iv) the fourth anniversary of the effective date, in respect of all other employers to whom this part applies."
- Ms. Gigantes: The effect of that amendment would mean that instead of having a six-year phase-in period for the full payment to all women who were owed equal pay adjustments under plans drawn up under this legislation, we would have a four-year phase-in period. We are asking here for--

Mr. Chairman: You are moving everything up a year, are you not?

Ms. Gigantes: Two.

Mr. Chairman: Two years?

Ms. Gigantes: Two years and not everything because our first amendment which would have brought up the date of large employers was defeated, so we are presuming that for the large employers, the phase-in time would be as it stands in the bill, which would be on the third anniversary. We are saying that third anniversary would also be the applicable payout date for the first instalment of the pay equity adjustments for all employees and firms where they were eligible for such benefits and where the size of the firm was between 100 and 500 employees.

Mr. Chairman: Okay. Again, I will ask for any comment or questions with respect to the two proposed subamendments under the section identified by Ms. Gigantes. It is a rather cumbersome one to read, so I think you know which one it is. You know the effect of what this will have on the bill, so I will call the motion if you are ready for it. All those in favour of the motion? Opposed?

Motion negatived.

Mr. Chairman: Do you want to keep on going while you are on a roll?

Ms. Gigantes: We have an amendment on page 37 of the original pack of amendments from the New Democratic Party to subsection 12(3).

Mr. Chairman: Ms. Gigantes moves that subsection 12(3) of the bill be struck out and the following substituted therefor:

- "(3) Every plan shall provide that,
- "(a) the female jobs that have the lowest rate of pay on the effective date shall be the first jobs to achieve equal pay; and
- "(b) employees who occupy female jobs and who retire before the plan is fully implemented shall receive their full wage adjustment according to the plan before the date of their retirement and the adjustment shall be prorated so as to provide for maximum pension benefits."
- Ms. Gigantes: If I could speak briefly to these amendments, clause (a) is a restatement of the existing section in the bill which deals with the staggering of equal pay adjustments so as to provide benefits first to those who are earning the least and to provide the largest benefits to those who are earning least in a job class which is going to receive equal pay adjustments. Clause (b) is an entirely new proposal and I draw it to the consideration of the committee with a great deal of seriousness. There will be women who will have to retire before they can see very much, or anything, in terms of equal pay adjustments under this legislation. What clause (b) calls upon us to do is to ensure that those women who are retiring before they get any money under their equal pay plan or some money under their equal pay plan will be given the full benefits that are their due under this limited legislation.

I would like to vote the two elements separately. I think that clause 3 (a) is just a simpler and clearer way of stating what is already contained in the bill and I hope that the committee will particularly pay attention to clause (b).

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Mr. Chairman: I like the intent of what you are suggesting in clause (a), but I would like to hear a little more about it.

Ms. Gigantes: It is in the bill, in effect. It is just not so nicely worded.

Mr. Ward: I request that we stand down clause (b).

Ms. Gigantes: A ray of hope, Mr. Chairman.

Mr. Chairman: With respect to clause 12(3)(a), the intent is to provide the benefit to the lowest-paid employees first.

Ms. Gigantes: Yes.

Ms. Caplan: It is in there.

Mr. Chairman: That is part of the question I had. Do you feel that it is not as clear in the bill?

Ms. Gigantes: That is correct.

Mr. Chairman: It is not as specific. The supplementary question I had to that was that the bill leaves open the opportunity to pay those who are at the higher end of the scale, the female employee who is being adjusted but is at the higher end of the scale. You can also continue to help make that adjustment, but your amendment infers that you have to complete the equalization or equality payments for the low end before you can address the higher end. I wonder if my interpretation is correct based on your amendment.

Ms. Gigantes: No. Mr. Chairman, I think you are reading too much into it. What it says is that if there is a higher-rated group of female jobs and a lower-rated--when I say "rated" I mean paid--female group of jobs within a firm, the obligation shall be to provide that the lowest-rated jobs achieve pay equity as it is defined under this legislation first. Their needs will be the greatest. It does not say that it has to be completed before anybody else's pay equity problems are addressed.

Mr. Chairman: The lowest rated.

Ms. Gigantes: That is correct.

Mr. Chairman: Can I ask the parliamentary assistant? It really seems to be a question of wording here more than intent. I think both the bill and the amendment intend to do the same kind of thing, but I am not certain-

Mr. Gigantes: We have a negative indication from counsel.

Mr. Revell: Yes. I think the effect of clause 12(3)(a) as opposed to subsection 12(3) as drafted in the bill is very different at law. Clause 12(3)(a) provides for a catch-up provision only for the people who are in the lowest-paid positions on the effective date, whereas subsection 12(3) as drafted is going to be, as Ms. Marlatt said, a cascading provision.

There is always going to be somebody who may be lowest, and this in effect says, "Look, we are going to try to treat people fairly so that nobody falls behind." It is a matter of policy as to which way people want to vote on it, but I think that it is not just a matter of wording. There is a very different policy between the two motions.

Ms. Caplan: Let me just read it out to see if I have the wording as I understand it:

"A pay equity plan shall provide that the female job class or classes that have, at any time during implementation of the plan, the lowest job rate shall receive increases in rates of compensation under the plan that are greater than the increases under the plan for other female job classes until such time as the job rate for the female job classes or classes receiving the greater increases are equal to the lesser of"--

Mr. Revell: That is right. Some are going to be falling behind others and then they will catch up, and there will be others that may fall, but it will be only a temporary aberration in the system because they will just keep catching up.

Ms. Caplan: So it is to bring them all up?

Mr. Revell: Yes.

Ms. Caplan: I like ours better.

Ms. Gigantes: Can I suggest that under the government amendment to subsection 8(3), which we have passed, we cannot really pass subsection 12(3) as it is written in the legislation. Subsection 8(3) is in contradiction to subsection 12(3) as it is written in the bill.

Ms. Herman: I do not think it is a contradiction. Subsection 8(3) provides just what the final adjustment due will be, whereas the amendment in subsection 12(3) that we are looking at now talks about how that weight adjustment is to be apportioned over the time the plan is being implemented.

Ms. Gigantes: So that if we have a clerk 2 and a clerk 6 eligible to receive \$1 an hour as a pay adjustment towards the achievement of equal pay in the first year, what 12(3) would tell us is that we are not doing it on an annual basis in equal amounts.

 $\underline{\text{Ms. Herman}}$ : That is right; subsection 8(3) does not tell you how to phase out your adjustment over time, it just tells you what the final adjustment will be.

Ms. Gigantes: I understand. We should never have supported 8(3). I am going to move later that we go back to it.

Mr. Chairman: I am not certain I am personally clear on clause (a) yet. I still have this certain attraction to Ms. Gigantes' amendment, simply because it appears to be clearer in its intent, but if I am assured that--

Ms. Gigantes: Perhaps legislative counsel might help committee members by giving us an example, beyond describing the abstract framework of the difference we are dealing with, so we could see it in operation.

 $\underline{\text{Mr. Revell:}}$  In terms of giving specific examples, I think I should defer to my clients who gave me the instructions with respect to the drafting of it. I have explained the law, but I think that in terms of--

Ms. Gigantes: It is quite clear what our intent is. In fact, when I suggested it was a better phraseology for 12(3), I believe that is what it is. It does not have the same effect. I think it is a better way of doing it.

 $\underline{\text{Mr. Revell:}}$  But that is a policy issue as opposed to a drafting issue,  $\overline{\text{I submit.}}$ 

Mr. Chairman: Could we have an explanation of what the impact would be in a specific case or some examples that might help to enlighten us somewhat?

Ms. Marlatt: I think the policy was that there are accelerated payments to the lowest-paid job class or classes. If we had the example of a clerk 1, if we had decided a secretary 1 and a something else 1 could all be lowest, maybe the first two are lowest-paid. They would get a slightly accelerated payment until they caught up with the other one that was also getting a payment, and then they, as a group, would accelerate so that they got their wage adjustment first. The lowest-paid could be accelerated; when they caught up to the next-lowest-paid, then they could all be accelerated together, but everyone would continue to get some wage adjustment and those who are the lowest would continue to get accelerated payments so they would be the first to achieve pay equity.

When you are allocating the one per cent, you would give proportionately more to the lowest-paid classes, but there is this moving aspect to it. Once you catch up to those above, then you move together because you are the lowest-paid.

Mr. Chairman: What is the distinction in the other example?

Ms. Gigantes: Ours simply says that where one has determined on the effective date what the lowest-paid jobs are that are going to receive equal pay benefit on an annual basis, you make sure it is those jobs that achieve equal pay first.

Ms. Caplan: You could have a situation then where the person at the lowest level, 1, would receive her pay equity adjustment to the level of 3, if that was the pay equity adjustment, which would be higher than the person at 2. What we are proposing is that the person at 1 would receive the adjustment up to 2, and then together 1 and 2 would reach 3, so that you would not have a leap-frog effect where 1 goes to 3 but 2 stays at 2 and then comes up to 3 the year after.

Mr. Barlow: You just eliminated 2 there, did you not?

Ms. Caplan: As I read this one, you would take 1 to the full adjustment before you touched 2, and then after--

Ms. Gigantes: No.

Mr. Chairman: That is the question I asked.

Ms. Gigantes: This simply puts on the requirement that whatever is the lowest-paid job achieve equal pay first. It does not say--

Mr. Chairman: The lower end would be accelerated, and the higher end would in fact be somewhat slower. Correct?

Mr. Ward: I really think Ms. Caplan was right in that you would leap-frog.

Ms. Gigantes: It is not the question of leap-frogging that I objected to in her description.

Mr. Chairman: The whole group could be moving at once.

Ms. Caplan: Our proposal was that the group would move at once. Her proposal is that in the first year, for example--

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Mr. Ward: But you would concede that is what happens in that.

Ms. Gigantes: It might happen; it might not.

Ms. Caplan: If we are looking at the set example, making it as simple as we can, the suggestion would be that in the first year, class 2 would receive nothing and class 1 would receive all the way up to the equal pay adjustment because it is the lowest. Under our proposal, class 1 would receive more than class 2, but they would move together.

Ms. Gigantes: No.

Mr. Chairman: That is not what Ms. Gigantes is saying.

Ms. Caplan: I know, but that is the effect of what she has written.

Ms. Gigantes: No, it is not the effect. Do not say what the effect is. Look at the phrasing of it. Clause 12(3)(a) says "the female jobs that have the lowest rate of pay on the effective date shall be the first," not the only.

Mr. Ward: The first to achieve pay equity.

Ms. Gigantes: That is right. We know these pay equity schemes can go over 17 or 20 years. All it means is that they might reach it at year 5 instead of year 17.

Ms. Caplan: Could we ask legislative counsel for an interpretation?

Ms. Gigantes: It is not exclusive.

Mr. Revell: I have to agree with Ms. Caplan that the effect of the words as on the page here are that you would look to find the lowest jobs in an establishment. The expression that is used in the motion is "female jobs," but I assume that would be amended to make it consistent with the terminology we are using in the bill, "female job classes."

You would look to find the female job classes that have the lowest rate of pay on the effective date. Obviously, there may be one or two tied or there may be a lowest. It is clear that it says they are going to be the first job classes to achieve equal pay. That means that in the diagram we have over there, under column F, 1 is clearly the lowest-paid job class. It may be that 1, 2, 3 and 4 are all going to require pay equity adjustments. You can see that they are arranged in a hierarchy. The way this is drafted, if 1 is the lowest job class, it should be leap-frogging over 2 and 3.

Ms. Gigantes: It may well. I was not disputing her statement on that. What was in dispute was that the amendment as we have presented it means that no other job class would receive equal pay adjustments until the lowest job class had achieved pay equity as defined under this legislation. It is not exclusive. It simply says that there shall be an accelerated method of providing payments to the lowest job class, so that the lowest job class reaches the achievement of pay equity first. It does not say nothing happens with other job classes.

Mr. Revell: I agree with you on that. There is nothing in here that prevents payments to other job classes, but they are going to have to be implemented in such a way that, indeed, in the final analysis, the lowest has to be the first to achieve pay equity. It clearly says that they shall be the first jobs--or job classes, in the new language--to achieve equal pay. It is quite clear on that.

Mr. Chairman: I personally do not have a problem with the lowest ones being first through the finish line and those who are at least somewhat more substantive in terms of their income coming across the finish line a little bit later. I just want to make sure we have a moving group and that we are not leap-frogging, because that throws the whole principle of the differential out of whack.

For example, there are groups such as the police departments, where some have a set percentage between categories that are well established. Whether it is a male or a female doing the same job, they obviously get the same amount, but it is a seven per cent differential through the ranks. You start off as a first-class constable. As you go up, there is a seven per cent differential through the ranks. You would throw all that right out the window if you leap-frogged all over the place. As long as I can be assured it is a moving group, I have a great deal of sympathy for the lower end of the income spectrum getting more money first.

Ms. Caplan: The bill as drafted will mean that they will reach the finish line together. The proposal from the New Democratic Party would create leap-frogging and, I think, extremely hard feelings from those who are leap-frogged over.

Our proposal would have them reach the finish line together, which means that those at the lowest would get more than those at the level above, but they would reach the finish line together. I think, as a policy decision, that makes more sense, and you will have no ill will within your unit.

Ms. Gigantes: There is nothing in the amendment that we have proposed that rules out the orderly distribution of pay equity adjustments on an annual basis, so there is no leap-frogging.

Ms. Caplan: Wrong.

Ms. Gigantes: No.

Ms. Caplan: The potential is there according to the legislative draftsmen.

Ms. Gigantes: The potential is there, but there is nothing that requires it at all. Let me put it this way. What the government amendment lacks is the suggestion, which I think is an attractive one, that those who have the lowest level of pay and are eligible for equal pay adjustments should reach equal pay before those who have higher levels of pay.

Ms. Caplan: We are saying we will do it together.

Mr. Ward: If we are going to reach it at the same time, that would mean greater adjustments to the lowest ones.

Ms. Caplan: We are saying they get there together.

Mr. Ward: Greater adjustments to the lowest ones, but they reach the end at the same time.

Ms. Gigantes: Who has the greatest need?

Mr. Ward: The ones at the lowest end.

Ms. Gigantes: They should get to it first.

Mr. Ward: They should get to it at the same time.

 $\underline{\text{Ms. Gigantes:}}$  No, I think the need is greatest at the lowest end. Mr. Chairman, there is the simple matter that is before us and we can vote on it, I think.

Mr. Chairman: I think we have had a reasonably thorough debate on it, so let us call the motion and get on with it. We are voting on clause 12(3)(a).

In favour?

Opposed?

Motion negatived.

Mr. Chairman: I just wanted to you to know you had a friend over there on at least one amendment.

Ms. Gigantes: We are standing down clause 12(3)(b).

Mr. Chairman: Clause (b) is postponed?

Mr. Ward: Clause (b) is postponed.

Mr. Chairman: We have a couple of housekeeping items to what you just carried, or as amended?

Clerk of the Committee: As amended and carried.

Mr. Chairman: We had amendments on subsection 12(2), and I need a covering motion, as amended.

Shall subsection 12(2), as amended, now carry?

All in favour? That is carried.

Is that the only one?

Clerk of the Committee: Yes.

Mr. Chairman: Is this a reasonably logical place at which to break?

Mr. Ward: It has never mattered before.

Mr. Chairman: No. We have broken according to the rules established by the Polsinelli rules of order.

Mr. Ward: I would be concerned with the member for Cambridge (Mr. Barlow) carrying his Erskine May.

 $\underline{\text{Mr. Chairman:}}$  He always bothers me when I--okay, we are adjourned until  $\underline{\text{tomorrow at 10.}}$ 

The committee adjourned at 5:28 p.m.



Projection



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

TUESDAY, APRIL 7, 1987

· Morning Sitting



# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Barlow, W. W. (Cambridge PC) for Mr. Rowe

Davis, W. C. (Scarborough Centre PC) for Mr. Partington

Pierce, F. J. (Rainy River PC) fo Ms. Fish

Clerk: Mellor, L.

#### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Legislative Counsel

Evans, C. A., Research Officer, Legislative Research Service

#### Witness:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

#### LEGISLATIVE ASSEMBLY OF ONTARIO

# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

# Tuesday, April 7, 1987

The committee met at 10:17 a.m. in room 151.

# PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

Mr. Chairman: Good morning, members of the standing committee on administration of justice. Before we begin our business for this morning, perhaps you would like to make a brief notation of items that the clerk has advised have been stood down or postponed from our discussions yesterday, just so you will have a list to know what we have to go back to.

I will start with section 8a. Then there is page 33, which is subsection 11(6) of a New Democratic Party amendment that was not moved with the other five subsections we dealt with yesterday. Then I have clause 12(3)(b) and section 9. Unless you have any others, those are the ones that--

Mr. Barlow: What was the second one?

Mr. Chairman: Page 33, which is subsection 11(6) of an NDP motion on section 11. There were five parts that were dealt with yesterday, and the sixth part was to be dealt with separately, depending on how the New Democratic Party wishes to deal with it. That is one part of that motion, in effect; it is on page 33 of the NDP pages. Then there is clause 12(3)(b) and section 9.

Ms. Gigantes: I would like to indicate that we will be withdrawing certain amendments which have become either impossible or irrelevant as a result of decisions the committee has taken. I can list those amendments now if that is agreeable to the committee.

They are: on page 42, amendment to subsection 12(8); page 43, amendment to subsection 12(9); page 45, amendment to subsection 13(1)--am I going too fast?

Mr. Chairman: No.

Ms. Gigantes: On page 72, amendment to subsections 23(2) to (4); page 73, amendment to subsection 23(5); page 77, amendment to subsection 24(4); page 81, amendment to section 26; page 75, subsection 24(2).

Mr. Barlow: You are going back. You want me to go back to page 75?

Ms. Gigantes: You are right; it is out of order. Forward again to page 83, dealing with clause 28(2)(b); page 91, dealing with clause 33(2)(e); and page 93, dealing with section 40. I hope that lightens our load.

We are introducing two rewordings of amendments, one of which is on the whole list which the clerk has just given us.

Ms. Caplan: Is clause 12(3)(a) to replace page 37, 12(3)?

Ms. Gigantes: It is 12(3)(b), which was stood down yesterday.

Ms. Caplan: Yes.

Mr. Chairman: Do you have a suggestion, members of the committee, as to where you would like to start? Do you want to pick up any of the postponed items first?

Ms. Gigantes: Why do we not do that?

Mr. Chairman: All right. We can start with subsection 1(6) on page 33 if you would like and dispose of that item.

Ms. Gigantes: We have moved that as a separate amendment, which you will find in your package, numbered section lla. It does not have a page number. It follows page 32. Is that right? Is that the one we are dealing with?

Mr. Revell: No.

Ms. Gigantes: Sorry.

Ms. Marlatt: Page 33.

Mr. Chairman: All right. What do you want to do with subsection 1(6)? Are you withdrawing subsection 1(6)?

Ms. Gigantes: No. I never read it into the record yesterday. It is now tabled or circulated as an amendment labelled section lla. It comes after page 35 as a replacement.

Mr. Chairman: Fine.

Ms. Gigantes: Would you like me to move it now?

 $\underline{\text{Mr. Chairman:}}$  Yes. Do we have to have anything done with subsection 1(6)?

Mr. Revell: It was never read into the record, so it is not part of the motion.

Mr. Chairman: Okay, fine. We can ignore subsection 1(6) for our purposes and then move to section 11a. I think we are on stream now.

Ms. Gigantes: Good.

Mr. Chairman: Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"lla. On the mandatory posting date and for every year that the equal pay plan is established under section 12, every public sector employer shall notify the commission of the amount of money required to establish the pay equity fund and these amounts shall be paid to the employer out of the moneys appropriated therefor by the Legislature."

Ms. Gigantes: I think we all know what we are talking about here. The intent of the motion is to ensure that for the public sector of Ontario

the employers will not bear the full brunt of the cost and the taxpayers associated with contributions to those employers in the specific sense will not bear the brunt of equal pay adjustments. What we are proposing is that for all public sector employees, where equal pay adjustments should be made under plans, the moneys shall be allocated by the Legislature.

Mr. Chairman: I have to advise Ms. Gigantes and the New Democratic Party that my ruling with respect to this amendment—and I think you are anticipating this—which would impose a charge on public funds, can be moved only by a minister of the crown and needs a letter of recommendation from the Lieutenant Governor. Therefore, the amendment, in my humble judgement, is out of order.

Ms. Gigantes: Mr. Chairman, I am stunned. Do we have any word from the parliamentary assistant that we could expect--

Mr. Chairman: All right. Perhaps you should speak to my decision. You may want to speak to the motion in the context of the decision I have made. If you disagree that it is a charge on the public purse and therefore is out of order, I would like to hear from you in that respect. That is how I interpret it.

Mr. Ward: With that limitation --

Mr. Chairman: I have opened it up to give you very little by way of limitation.

Mr. Ward: I have to concur with the ruling of the chairman in this regard. The way this motion is worded, it would require the government to transfer those funds to any public sector agency whose revenue base would not in fact be limited just to provincial transfer payments.

On other motions that have come forward and imply in them an administrative cost, the chairman has been consistent in ruling that they could create an additional cost, but we have let those be put to a vote because the argument there is subject to some question as to what those costs are and basically whether there are additional costs incurred.

I do not think there is any question that there would be tremendous additional costs with this amendment, and I do believe the ruling of the chairman is correct.

#### 1030

Mr. Baetz: I realize you have ruled, Mr. Chairman, and we may not debate this particular amendment, but I guess we can sort of talk around the general idea and see how we might get at this.

I just want to say that as far as we are concerned, we very much support the idea that somehow, somewhere, in some way, some place, it is made very clear that the added funds that are going to be required—if this works at all, added funds will be required—shall be made available, and not on a "by guess and by God" basis; it should be thoroughly established and clearly understood by everybody that there would be extraprovincial transfer funds available to implement this particular legislation.

I do not know how one gets around it, but if we as a committee do not refer to this, frankly I think this thing could be a bit of charade in the

public sector. I should also say that we have made it very clear in the private sector that you cannot take money that would normally go to other employees by way of annual increments or whatever in order to pay for the pay equity program.

Ms. Gigantes: You voted against our amendment.

Mr. Baetz: No, I did not. You wanted "restrain" and we said "reduce." Let us not get into that. In the private sector I think it is fairly clearly established in this bill that you cannot simply take money from one to pay for the other.

Mr. Charlton: You killed it.

Mr. Baetz: No, we did not. We certainly did not.

Ms. Gigantes: It is your version of revisionism.

 $\underline{\text{Mr. Baetz}}$ : I disagree with you entirely on that one, but the fact is that this cannot happen in the public sector and will not happen in the private sector either in spite of what the NDP may feel about this.

Ms. Gigantes: Can we get that in writing?

Mr. Baetz: Somehow or other, Mr. Chairman and Mr. Parliamentary
Assistant--

Ms. Gigantes: Like in an amendment?

Mr. Baetz: --this has to be in the legislation or an accompanying--I do not know how, but I would like to get some further information and some further insights on this subject.

Mr. Ward: Mr. Baetz, as a former minister of the crown, will be aware that in the formulas that are arrived at in determining transfer payments to public sector agencies, all the factors are taken into consideration in the development of the level of funding that is available, whether there are arbitrated settlements or whatever.

Wages do play a critical role, but what this amendment is stating is that for every broader public sector agency—for instance, municipalities, which may depend on realty taxes for 60 per cent of their revenue base—you are creating an obligation here that all the funds that are required for pay equity adjustments come solely out of the creation of a separate transfer fund. I do not believe that is appropriate. It is an additional charge. It is not done in any other fashion.

We all recognize that there will be costs associated with this and that those will have an impact on transfer payments. Nobody would deny that, but to establish a separate fund and limit the adjustments that are made under this legislation solely to moneys that are made available through the consolidated revenue fund is totally inappropriate.

Mr. Baetz: We are not debating this specific amendment here. We are not allowed to. But my point was simply, and continues to be, that somehow in some very specific way, whether it is this committee, whether it is the minister responsible or whoever, should make it very clear that the province having, as we hope it will, passed this legislation, that in fact the compensating money must be there.

Mr. Charlton: It is clear from what he just said that is not the intention. Please, listen to what he is saying.

Mr. Barlow: Send it to the municipalities. Let the municipalities pay for it.

Mr. Baetz: I can recognize the legal difficulties in perhaps writing it in the way it is presented, but I must say that the idea, the objective, is certainly a very valid one, a legitimate one and one we ought to be looking at in trying to devise maybe some innovative ways to ensure that these funds will be there. If they are not, you will just play around with this for years and years.

Mr. Chairman: I gather what you are saying is that even though you have some sympathy for the thrust of what is proposed in the amendment that I have ruled out of order, you are not questioning the chairman's ruling with respect to the propriety of this particular motion that has been put before us.

What I am indicating, if I may borrow the words of the parliamentary assistant, is that as a former minister of the crown you are well aware that the government does have the right, the obligation, the responsibility to order its business and that in so doing it must also establish its budgetary limitations.

Mr. Baetz: Yes.

Mr. Chairman: This committee does not have the arbitrary or the unilateral kind of flexibility to alter that in a substantive way. That is all I am saying as chairman. The attractiveness of the amendment is not what is before us. I allowed you to debate that simply because I know you wanted to get certain feelings on the record, as others have. But I do want to get a clear indication from you as to whether or not you are with your chairman on this issue.

Mr. Pierce: Just barely.

Mr. Baetz: Technically, yes; spiritually, no. I appreciate that there are certain clear-cut procedures here in terms of financing programs. I am aware of that, so therefore I guess technically I cannot argue with your ruling.

Mr. Chairman: Thank you, Mr. Baetz.

Mr. Baetz: I will be glad to keep quiet at this point, provided I get some assurance from somebody around here. Perhaps the parliamentary assistant is the logical one. Somewhere in the process of getting this-

Ms. Gigantes: Make him a woolly promise.

Mr. Chairman: A promise, is that it?

Ms. Gigantes: Make him a woolly promise and he will shut up; that is what he said.

Mr. Baetz: How about you? Are you going to accept a woolly promise?

Mr. Chairman: While you are thinking of what you might say by way of response to the promise that you have not made yet, could I go to Ms. Gigantes

and then to Mr. Barlow? Then I will come back to the parliamentary assistant. By then, we should have a pretty good idea of where we are going to go with this amendment.

Ms. Gigantes: Mr. Chairman, I am going to question the technicality of your ruling in this matter. It seems to me that we know there is going to be a cost, assuming that this legislation has any significance in the salaries and the pay levels of women who work in the public sector in Ontario. There will be a cost associated with equal pay adjustments.

Then we have to look at who bears the cost. Essentially, what we are being told is the cost can be borne one of two ways; it can be and-or. It can be borne by the employees of public agencies in the sense that their general annual wage increments can be restrained--not reduced necessarily--over a period of years so that moneys that would have gone to wages will now be divided. Some may go to wage increases, but a much smaller proportion, and another portion will go to pay equity adjustments, as the government calls them.

The alternative, and it could be an addition to the first method, is to have the taxpayers at the local level bear the cost. It seems to me that the taxpayers at the local level will be asked to bear some of the cost. There is no doubt in the mind of public sector employers and there is no doubt in the mind of public sector employees that the taxpayer at the local level will be asked to bear some of those costs.

That is in itself a form of taxation. We are passing legislation which will invariably lead to an increase in the tax levels at the municipal, regional and school board levels of taxation.

Having committed itself—if there is any commitment at all—to this project of providing equal pay, or pay equity as it is defined in the bill, this government says it will not bear the responsibility of increasing provincial taxation levels or using provincial tax revenues to pay the cost of pay equity adjustments for the public sector. But it cheerfully shifts some of that cost to the local tax level.

#### 1040

I submit it is quite possible that the total cost of pay equity adjustments for public sector agencies and employers could be shifted to the local taxpayer. That being the case, we are looking at two different kinds of taxation.

While the government has not identified at all how it expects public sector agencies and employers to pay the costs of pay equity adjustments, it has certainly left the road open that the payment shall come from that source. That amounts to an indirect tax. I would like somebody to give some indication of what this indirect taxation is going to mean at the local level and why it is that, technically, you will accept that the government is not putting forward a taxation bill, when in fact we know where the costs are going to be falling. Perhaps they will come out of the pockets of public sector employees and in some measure they will certainly come out of local taxpayers' pockets.

Then the question becomes: How much and what portions? We have had no indication from the government of its intent on this matter. I submit to you further that it is totally legitimate for us to be questioning the method of providing the funding in the public sector and that is essentially what we are doing in this motion.

We are also proposing a method which we know to be the fairer method, in which all the people of Ontario who pay provincial income tax, through business tax or personal income tax, fees or whatever—at least our income tax base is a fairer, more progressive tax base. What we are asking in this amendment is that the method of payment be the one which is most fair.

Mr. Chairman: Before I go to Mr. Barlow, may I ask you a question with respect to your position? Having said all of that and looking at your argument in terms of fairness, equity and the appropriateness of the kind of transfer methodology that you are proposing, surely you would agree that, given all those arguments, there is an impact on the provincial Treasury that is not suggested for consideration in Bill 154 at this time.

Ms. Gigantes: We are suggesting that we should be permitted in this committee to provide recommendation to this Legislature about the method of paying the costs in the public sector, when we know the government has left open a form of indirect taxation through the measures in this bill because it has not specified who is going to pay. We know that at least some of that burden will fall on local taxpayers.

I am suggesting that we identify and substitute one method of using tax dollars for another method of using tax dollars.

Mr. Chairman: However worthy that goal might be--and I am not going to make a judgement on what you are proposing--what I have heard from you so far has simply reinforced the position that I have to take on this amendment, that it is out of order.

Ms. Gigantes: Can I ask you one question on that?

Mr. Chairman: Yes, certainly.

Ms. Gigantes: Is a proposal which, in effect, indirectly creates taxation in municipalities not a tax bill? This is, in effect, a bill which is open to becoming a tax bill and we know it will become a tax bill the way it is framed now. Is it not legitimate that this committee recommend to the House how the nature of that tax bill should be changed?

Mr. Chairman: There are other forums in which that might be done. This is not the forum--

Ms. Gigantes: It is appropriate to do it in the context of the matter we are discussing immediately before us, which is how you pay for it.

Mr. Ward: Is it? Are you concerned that any wage increases in the broader public sector are totally inappropriate, as long as part of the revenue base is generated from a source other than the consolidated revenue fund of the province?

Ms. Gigantes: No. I do not understand your question, so I cannot --

Mr. Ward: You do not understand?

Ms. Gigantes: No.

Mr. Ward: Okay.

Ms. Gigantes: I do not. Perhaps you could rephrase it.

Mr. Ward: I will try to rephrase it, but I think your argument is, it is totally inappropriate that the wage adjustments that result from this bill should be funded out of the revenue sources of those municipalities--

Mr. Charlton: Property taxes.

Mr. Ward: --which include property taxes and transfer payments.

Mr. Charlton: That is correct. What we are saying is that the provincial tax base is the most appropriate and fairest base from which to--

Ms. Gigantes: That is right.

Mr. Ward: But you are saying those increases should not come from the normal revenue base of the municipality.

Mr. Charlton: That is right.

Mr. Ward: So any wage increase at the municipal level is inappropriate.

Mr. Charlton: We are not talking of wage increases. You were talking about the pay equity package and nothing more.

Mr. Ward: We are not talking about wage adjustments.

Ms. Gigantes: If we are permitted to discuss the substance of the amendment in terms of the reasons for putting it forward, I will be glad to engage in a debate about that, but I thought we were supposed to be addressing ourselves to your ruling.

Mr. Chairman: We are, and the ruling, of course, has to be based on the content of the amendment, so I am allowing for a little bit of discussion beyond the scope of just the narrow ruling. I have to allow that because it is based on what the amendment says. My position is still that the amendment calls upon the government to spend more money and therefore exceeds or expands the scope of the bill. I will go to Mr. Barlow.

Mr. Barlow: I realize you have a duty to perform here, making a ruling such as this. It might well be that we will have to caucus the decision, whether or not to uphold the ruling of the chair.

Mr. Chairman: I would be interested in your position on the chairman, Mr. Barlow. I know that you do chair a number of meetings in committees, so I will be very interested in what your caucus decides to do at this point.

Mr. Barlow: I am sure you will.

Mr. Chairman: I await with bated breath.

Mr. Barlow: To help me make a decision on your ruling, perhaps I could ask Ms. Gigantes a question. Would you care to broaden your motion to include the private sector employers too, who are also going to be in the five per cent of the cases where we understand there is true discrimination? Perhaps you would care to broaden your motion to include the idea that private sector employers should be reimbursed by the government.

Ms. Gigantes: We can count on your support for that one too, can we?

Mr. Ward: We will probably support that position.

Mr. Barlow: I think that is a philosophical position that you could support.

Ms. Gigantes: Go drag your red herring somewhere else.

Mr. Charlton: We moved our motion on that one and it was defeated.

Mr. Ward: That is your position?

Mr. Barlow: That is your position. It is a red herring. Is that right?

Ms. Gigantes: That is a red herring. We are dealing with one motion and the chair is ruling on that motion.

Mr. Barlow: I see. Okay.

Mr. Chairman: I want to read into the record page 557 of Erskine May's Parliamentary Practice, 20th Edition. This is section 12 of that page. "Amendments or new clauses creating public charges cannot be proposed, if no money resolution or ways and means resolution has been passed, or if the amendment or clause is not covered by the terms of such a resolution. This rule, which is of fundamental importance, is fully explained in chapter 28 and again on p. 815."

Mr. Charlton: Do not close that, Mr. Chairman. You have just very nicely and succinctly completed my colleague's argument, and I would like you to read the first line of that into the record again.

Mr. Chairman: I would be happy to. I thought I read it rather well the first time. I will read it even better the second time.

Mr. Charlton: Sure. Do that.

Mr. Chairman: "Amendments or new clauses creating public charges cannot be proposed"--

Mr. Charlton: You may stop there. Thank you very much.

Ms. Caplan: Can I speak to that?

Mr. Charlton: I have the floor, thank you.

Mr. Chairman: Mr. Charlton has the floor.

Mr. Charlton: We have a situation here where both yourself, unfortunately, and the parliamentary assistant, unfortunately, are focusing on whether or not the provincial government will pay, municipalities will pay, school boards will pay. The quote you just read to us, sir, talks about provincial taxpayers and public expenditures.

Mr. Chairman: It talks about amendments.

Mr. Charlton: The question is: Are we making an amendment which is creating a new public expenditure?

Mr. Chairman: No, you are--

Mr. Charlton: No.

Mr. Ward: Your preamble was correct.

Mr. Charlton: No. We have one package of provincial taxpayers here who, we already know, under this legislation are going to have to pay the cost of pay equity in the public sector.

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Mr. Ward: Your preamble was correct in that we are talking about amendments that generate a cost that has to be borne--

Mr. Charlton: This amendment generates no cost.

Mr. Ward: --by the school boards, the municipalities and the provincial government during the course of transfer payments, because obviously there is an impact. Nobody is suggesting there is not a cost to the provincial Treasury involved here. What you are suggesting is--and I assume you have an amendment--that all private sector wage adjustments will be paid for by the government as well.

Mr. Charlton: No.

Mr. Ward: But what you are suggesting is that the only appropriate revenue source for wage adjustments in the broader public sector is through transfer bonds.

 $\underline{\text{Mr. Charlton}}$ : We are not presently debating the content of the motion; we are debating whether it is in order. The chairman has ruled, and I will ask him to read the line again.

Mr. Chairman: I have virtually got it memorized, but if you give it back to me, I will be happy to.

Mr. Charlton: I make the procedural argument --

Mr. Chairman: How many more times would you like me to read this? I have a new one, by the way.

Ms. Gigantes: I want to hear what he is saying.

Mr. Charlton: I want to get these two off the argument about whether the substance of the resolution is-

Ms. Caplan: Underline "amendments."

Mr. Chairman: "Amendments"--underlined--

Mr. Charlton: Yes.

Mr. Chairman: -- "or new clauses creating public charges cannot be proposed."

Mr. Charlton: That is right. We can stop there. Our amendment creates no new public charge.

Ms. Caplan: It certainly does.

Mr. Charlton: It does not.

Mr. Chairman: In the interpretation--

Mr. Charlton: Is the public of Ontario going to pay the total cost of pay equity in the public sector? Yes; so this amendment creates no new public charge. Therefore, it is not out of order.

Mr. Chairman: I want to supplement what I have just read to you by reading Beauchesne, which is a somewhat smaller book, page 233, "An amendment is out of order if it imposes a charge upon the public Treasury, if it extends the objects and purposes, or relaxes the conditions and qualifications as expressed in the royal recommendation."

Mr. Charlton: What is the public Treasury, Mr. Chairman?

Mr. Chairman: The public Treasury, in terms of--

Mr. Charlton: The public Treasury is the Treasury of Ontario, the Treasury in Ottawa, the Treasury in the muncipalities and in the school boards; that is the public Treasury.

Mr. Chairman: No. The narrow interpretation of the public Treasury --

Mr. Charlton: Those are all public funds.

Mr. Chairman: --as dealt with by a provincial committee, is the consolidated revenue fund. That is the public Treasury for the purposes of our discussion.

Mr. Charlton: This amendment creates no new public charge.

Mr. Chairman: However, if you do not believe what I have just read to you from Beauchesne, let me read further. This is the Standing Orders of the Legislative Assembly. You and I had something to do with these rules.

Mr. Charlton: That is right. I spent eight years in the committee.

Mr. Chairman: Page 4, section 15: "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lietutenant Governor, and shall be proposed only by a minister of the crown."

How much more clear can it be?

Mr. Charlton: Again, that section just backs what I am saying.

Mr. Chairman: In what language does it back what you are saying?

Mr. Charlton: This amendment does not impose any new public charge. The public of Ontario is going to pay the total cost of this legislation, and it does not direct that money either, simply because we have already agreed that the public is going to pay that charge anyway.

Mr. Polsinelli: Mr. Charlton, I think you have a very valid argument.

Mr. Chairman: Ms. Caplan, Mr. Polsinelli and Mr. Baetz, in that order. Shortly we will have to call this to a close. The end result of all this discussion has to be either concurrence with my ruling or challenge of my ruling, by way of a motion. That ruling will make the motion in order. Then you can challenge the chairman's ruling, and we can go on from there, but we should get moving. I will go to Ms. Caplan first.

Ms. Caplan: I would like to speak in support of the ruling by the chairman of this committee and state that I think throughout the conduct of the entire proceedings of the justice committee there has been a very able chairman, with full knowledge and understanding of the rules of procedure. I think you have ruled correctly on all occasions.

It is my position that we have heard on this issue, particularly from the municipalities and the Council of Ontario Universities. When the question was specifically asked by my colleague, in fact there was recognition even by those groups that there was a difference between the consolidated revenue fund of Ontario and the tax bases and even the funding of universities, which do not receive entirely all their dollars from the consolidated revenue fund but have other sources which contribute to how they pay their expenses and levy their budgets. I think they made the case in support of your amendment equally as well as the lines and books you quoted, and I believe the quotations that you have made were accurate and that this motion would speak directly to the consolidated revenue fund as opposed to any and all of those other sources, so it is my belief that your ruling is correct and should be supported by this committee.

It is often the tradition that on a point such as this, where the clerk of the committee as well has advised the chairman as to the correctness of the ruling, that if the chairman is overruled on a matter of such fundamental importance, it sometimes leads to the resignation of the chairman, having being overruled. I would hate to see that happen because the chairman has been so competent in his decisions, so I would urge the members of this committee to support the ruling of the chairman.

Mr. Barlow: I might change my mind now.

Ms. Caplan: Think of who you might get in his place.

Mr. Barlow: Save the chairman.

Mr. Polsinelli: After such an eloquent speech and such a determined plea from Ms. Caplan, I do not think I can do anything less than support you. I simply point out that Mr. Charlton had some good points. Unfortunately, he has made up his mind and does not want to be confused by the facts.

Mr. Baetz: Have you read all the books of holy writ on this subject?

Mr. Chairman: I take them home with me every night.

Mr. Baetz: I am very encouraged by your last comment or reference from the standing orders of the Legislative Assembly. It probably will bear out your specific ruling on this specific amendment. Are you listening?

Mr. Chairman: Yes, I am. I received a note from your colleague and I was trying to respond to it. I did by laughing.

Mr. Baetz: You probably are correct in your ruling on this specific

amendment, but what I had asked earlier was whether there is no other way that we as a committee can guarantee that, in fact, the necessary added funds will be available to implement this legislation? You seem to think--or somebody else did; maybe the parliamentary assistant--that would also be inappropriate, but it is not.

Let us read standing order 15 again. It says, "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown." Surely, we can therefore follow that course: we could have a message from the Lieutenant Governor. We certainly all know where those messages come from. As to "and shall be proposed only by a minister of the crown," I would ask that this happen.

Can we not direct our concerns to the Lieutenant Governor in council or to the ministry?

Mr. Ward: I really believe the public sector agencies and municipalities in this province are more than capable of conveying to the Treasurer of this province--certainly this Treasurer is far more receptive than previous ones, and I say that in a totally nonpartisan way, so I have qualified that--their concerns with regard to the impacts that are borne upon their treasuries by whatever initiatives. It is not a new thing. There are wage settlements out there; there have been arbitrated wage settlements for public health units and their nurses, and those have an impact. As you know, they have an impact in terms of how their transfer payments are dealt with and what adjustments come through.

I find it really bizarre to suggest that this problem that exists out there in terms of discriminatory wage practices or whatever is solely the result and the responsibility of the provincial Treasury and consolidated revenue fund. There are municipalities out there that have put in place pay equity plans that have gone a long way in reducing the wage gap. Metropolitan Toronto, I believe, has had a pay equity policy on its books, the city of Windsor has had a pay equity policy on its books, and they have made the appropriate adjustments, and have gone a long way in terms of redressing the problem.

#### 1100

As for this whole notion that the costs should be borne only by the consolidated revenue fund here, we all know full well that the revenue base of those public sector agencies, whether they be universities, school boards or whatever, are not limited to transfer payments. I do not understand why the wage adjustments, solely for the purposes of pay equity, should be borne by the consolidated revenue fund.

I do not think my friends on the left would get on a soap box in North York and say, "You should not have parity because it is coming out of property taxes." They would do just the opposite. It is absolutely ludicrous to suggest that it should be borne only by the consolidated revenue fund.

Mr. Chairman: Could we try to get back to the question of the ruling so that we can dispose of that? We will have ample time to debate the motion, or the amendment, if it is in order. I am allowing for a little bit of leeway but you are straying quite a distance.

- Ms. Caplan: Has anyone challenged the ruling of the chairman?
- Mr. Chairman: Not yet. I had Ms. Gigantes first, but I will take you first with your colleagues' agreement.
  - Mr. Charlton moves that the ruling of the chair be overturned.
  - All right. We have had adequate debate on this so I will call now for--
  - Mr. Barlow: Could we have a couple of minutes to think this one out?
- Mr. Chairman: Okay. Do you want to recess for five minutes? Let us do that then.

The committee recessed at 11:02 a.m.

#### 1118

Mr. Chairman: In respect to members of the committee having had an opportunity to discuss the matter informally with their caucus groups, the question that is before us—and I have to curtail any debate, as you fully appreciate at this point—the only question before us now is, shall the chairman's ruling be upheld? My ruling, to reiterate, is that the amendment proposed by Ms. Gigantes of the New Democratic Party is out of order.

If it is a question, I can take it.

- Mr. Baetz: It is a question. Is it correct that a similar ruling--
- Mr. Chairman: Having put the question, I cannot allow even a question at this point. It is debate.
  - Mr. Pierce: Is there another motion from Mr. Charlton?
- Mr. Chairman: Yes. The motion from Mr. Charlton effectively is, shall the chairman's ruling be upheld? He challenged the chairman's ruling.
  - Mr. Baetz: On a point of order, Mr. Chairman: I would move--
- Mr. Chairman: Then you would have to have an adjournment, because once having put the question, there is no further comment or debate allowed, I have to take the motion.
  - Mr. Baetz: On a point of order--
- Mr. Chairman: There is no point of order. Oh, you are agreeing with this one, are you? Okay, I will call the motion.
  - All those in favour of the chairman's ruling being upheld? Opposed?
  - The chairman's ruling is upheld.
  - You had a point of order, Mr. Baetz.
- Mr. Baetz: It is unfortunate I was not allowed to ask this before, because I understood you made a similar ruling at the time of Bill 105, and I understand you were supported on your ruling by the Speaker and the Clerk of the House. I simply wanted to get that information; why they supported your ruling.

Mr. Chairman: I think you should feel somewhat comfortable in having supported the chairman's ruling, and I do not want to debate it, but I will defer to legislative counsel, who I think can perhaps give you some indication, if not of what happened with Bill 105, of the strict interpretation of the amendment I had ruled out of order. If you would like to give us your impressions, sir, that would be helpful.

Mr. Revell: Under Bill 105, a very similar circumstance arose where, on certain motions that were tabled, the chair made an advance ruling on the motions. The chairman's ruling was challenged, as it was this morning, and the committee overturned the ruling of the chair. As a result, the motions were in fact considered.

It would be my opinion that, in any event, this is in fact a money bill motion. It does charge the consolidated revenue fund. It deals with the allocation of money directly out of the consolidated revenue fund. Whether or not the taxpayers of Ontario pay it directly or indirectly is not the issue; it is, does it come directly out of the consolidated revenue fund?

I think it is safe to say the Clerk's office definitely agreed with the ruling of the chair in the last session, because obviously, the chair consults with the Clerk and with legislative counsel on money bill issues. There is a joint jurisdiction in advising the chair on these matters.

As to whether or not the Speaker agreed with it, I do not know what happened in the House with respect to the issue.

Interjection.

Mr. Revell: It has not been reported back, so the Speaker has made no ruling.

Mr. Chairman: It was not reported out of committee. It was as a result of the decision made by the majority of the committee when they overturned my ruling that the bill effectively died in committee. That is what happened to Bill 105 and why we are dealing with Bill 105 in the context of Bill 154.

Perhaps something was achieved by that, in the sense that the opposition parties were able to achieve some degree of success in terms of expanding 105, but they also killed the original bill.

Ms. Gigantes: I would not agree with that interpretation of events. The bill was not killed. The bill was never resumed in this committee.

Mr. Chairman: We understand why it was not resumed, though. You can put your own interpretation on that.

Ms. Gigantes: The whole package, the measures that were intended to be addressed by that bill, are now being incorporated into this bill, to set the record straight.

Mr. Ward: I do not think the chairman was making the point that the effect was to kill the bill. I do not think he was saying the bill was procedurally killed; the effect was to kill the bill, just so we understand where everybody is coming from.

Mr. Chairman: Having dealt with page 33 at some length, that amendment, therefore, is out of order. Do you want to go to 8a?

Mr. Ward: Section 8a was stood down, I believe, at the government's request. I understand that some work is ongoing with legislative counsel, and we are still not prepared.

Mr. Chairman: All right, then we can go to the subsection 12(3b) if you like.

On section 12:

Ms. Gigantes: We have introduced a new formulation of that amendment. It is one of the two new amendments we circulated this morning. It is now labelled subsection 12(3a). When you are ready, I would be glad to read it.

Mr. Chairman: Ms. Gigantes moves that section 12 of the bill be amended by adding thereto the following subsection:

"(3a) Every pay equity plan shall provide that an employee in a female job class who retires before the plan is fully implemented shall receive his or her full wage adjustment according to the plan before the date of retirement and the adjustment shall be prorated so as to provide for maximum pension benefits."

Ms. Gigantes: We had some discussion around a motion of this nature yesterday. We stood down the previous motion so the government could consider the nature of this amendment. I think everybody on the committee would agree that where we have legislation, as it now stands, which will take many years to implement and which will not even provide equal pay for work of equal value but something defined as pay equity, the very least we can do for employees who are eligible to receive pay equity adjustments under this legislation is to make sure those employees who are about to retire get the full benefit of the rights they would have were they younger.

Mr. Ward: The amendment has a certain attraction that all of us quickly recognize. I guess one of the major difficulties is in how the legislation has been drafted already, with a provision in there that those in job classes at the lowest end of the scale would get their increases first in terms of cascading.

It is easy to generate some genuine sympathy for the older workers who are approaching retirement age. At the same time, you are looking at an adjustment that may reflect some concern that correcting this problem has not, nor can it necessarily be, a retroactive exercise. In terms of the impact of this amendment and the workability in many instances, those who are approaching the retirement age could well be at the top of the scale. You are making an accelerated adjustment at the top of the scale and an accelerated adjustment at the bottom of the sale.

There is a real concern in terms of, first, its workability and, second, the fairness and the impact to all the employees in between as well. Having given it careful consideration, we feel we cannot support the amendment.

Ms. Gigantes: I really do not understand the substance of what the parliamentary assistant is saying. If he could indicate to us the degree of upset this amendment would create, I would like to hear it. There are not going to be that many women who will be retiring during the periods provided, at least by the beginning of the implementation stage. It is absolutely vital that we take a look at those employees who may never even get a first

instalment of pay equity adustment under this legislation and make provision for them.

## 1130

Mr. Ward: There are millions and millions of workers who will have retired before pay equity legislation was even contemplated, who are not going to get the benefit of this legislation either. I cannot give you the degree of impact. All I can say is that in the two provisions we have considered, one is that those at the bottom end of the scale get the adjustments first, and combine it with those who are approaching retirement age who are getting the adjustments.

Second, it does mean that those in those groups and job classes and those who are not approaching retirement age also have to wait even longer for their equity adjustments. I cannot give you the degree of that. I just do not know.

Ms. Gigantes: We can remedy part of that problem by going back and opening up the sections of the legislation which require such a long time for phase-in of the first payments, if you wish. It is certainly an option that is open to this committee to agree to go back and do that.

I think it is really intolerable that women who were told two years ago, when this government came into being, that there was going to be equal pay legislation now cannot even rely on having pay equity adjustments, and they are reaching their final years in the labour force.

Mr. Ward: Again I think we have had all those arguments, and the bill has been--

Ms. Gigantes: Let us vote.

Mr. Chairman: I believe we are ready for the vote.

Motion negatived.

Mr. Chairman: I need a motion on subsection 12(3) now. We have dealt with subsections 12(1) and 12(2).

Shall subsection 12(3), as printed, be adopted? Carried.

Subsection 12(4) has been completed and carried. We are now into subsection 12(5).

Ms. Gigantes: I believe there were a couple of other outstanding matters left over from yesterday's discussions. Mr. Chairman, I call your attention to our package of amendments, number 27c at the top of the page. Again at the request of members of the committee, we stood down amendment 8a.

Mr. Chairman: Yes. I had asked earlier about 8a, but apparently there is still some work going on with the staff on that. They want that to be continued to be stood down.

Ms. Gigantes: Did you mention section 9?

Mr. Chairman: I mentioned it--

Interjection.

Ms. Gigantes: So we will leave that.

Mr. Chairman: If you are prepared to deal with section 9, we can do it now. We were waiting for the government to prepare whatever additional material you needed on 9, is that not correct?

Ms. Caplan: No.

Mr. Chairman: Why did you have it stood down then?

 $\underline{\text{Mr. Ward:}}$  We did not stand it down. We had a general discussion, and there was a request to stand it down, I believe.

Mr. Chairman: Who requested it be stood down?

Mr. Charlton: You tabled the motion.

Ms. Gigantes: The motion that was tabled said--

Mr. Charlton: This section should be stood down until the remainder of part 2 of section 35 can be considered.

Mr. Chairman: Okay, thank you.

Ms. Gigantes: So we are up to 12, are we?

Mr. Chairman: We have not dealt with 35 yet.

Ms. Gigantes: Why do we not go back to 12?

Mr. Chairman: That is where I was when all this started.

Ms. Gigantes: We were just questioning.

Mr. Chairman: If you want to go back to 12, subsection 12(5) is where we were. We dealt with subsections 1 through 4; we are at 5.

Ms. Caplan moves that subsection 12(5) of the bill, exclusive of the clauses, be struck out and the following substituted therefor:

"(5) Adjustments shall be made in compensation under a pay equity plan on each anniversary of the first adjustments in compensation under the plan and shall be such that during the 12-month period following each anniversary the combined compensation payable under all pay equity plans of the employer shall be increased by an amount that is not less than the lesser of"--and then these subsections.

Did you wish to add anything in relation to the motion?

Ms. Caplan: The rationale for this is that it be clearly understood that it is a 12-month period we are dealing with. That was the intent of this motion. It was to be a 12-month period because there are different adjustment dates for different employers, and it was just to make it clear that it was a 12-month period.

Mr. Chairman: Since there are two amendments proposed on the same section, I advise you perhaps to peruse very quickly the New Democratic Party

amendment. You may want to make a comparative evaluation. We are only debating the government's amendment on subsection 12(5).

Ms. Gigantes: The motion, as I understand it from the government, essentially restates what is in the bill with the addition of the phrase "under all pay equity plans." Could we speak to that?

Mr. Ward: It says "following each anniversary" in the bill as written. My understanding was that could end up extending into a 23-month period with somebody with a one-year obligation; so we went to "on each anniversary" because it was never the intent that there would be that much latitude in terms of the date of compensation.

The wording does not look like a significant change, and yet the amendment does have a significant impact because the wording could have been taken to mean that after you have that one year, you have to make your adjustment during that period, which could extend 364 days. That was the reason for the changing.

Ms. Gigantes: But in effect what both the printed bill and the amendment say is that the one per cent covers all equal pay plans or pay equity plans, whether there is one or whether there are six. The contribution to all the plans shall be one per cent of total payroll; correct?

Mr. Ward: That is right, yes. I was just explaining the difference in terms of the amendment and the bill as written.

Ms. Gigantes: Will it have the significance of allowing another 365 days for the equal pay adjustment to be made?

 $\underline{\text{Mr. Ward:}}$  No. It will have the significance of disallowing an additional  $\overline{364}$  days.

Motion agreed to.

 $\underline{\text{Mr. Chairman}}\colon \text{Do you wish to withdraw that amendment now, Ms.}$  Gigantes?

Ms. Gigantes: No. What I would like to do, if I could, is stand that one down because I still would like to rework it. That is subsection 12(5).

Mr. Chairman: All right. At the request of Ms. Gigantes, we will stand down the NDP amendment on subsection 12(5).

Mr. Ward: Mr. Chairman, I do not know whether the NDP has given any consideration to this, but our amendment is relative to this. I am not sure whether the Progressive Conservatives have one at all, but ours is covered under section 32a, and I wonder whether we could deal with that issue under section 32.

Ms. Gigantes: Your amendment 32a?

Mr. Ward: I do not know whether we have tabled one.

Clerk of the Committee: You have tabled section 32a.

Mr. Ward: Yes. We have tabled one on section 32a, but we will probably be tabling a revised one as well.

- Mr. Chairman: If it is a revised one that we do not have before us, we cannot deal with it.
- Mr. Ward: No. All I am saying is that this issue in terms of the child care workers can be dealt with in section 32.
  - Ms. Gigantes: There is support in the standing down of the issue.
- Mr. Ward: What I was suggesting was that we could deal with section 12 without that outstanding and deal with that entire issue under section 32.
  - Mr. Chairman: Then you could rework--
- Ms. Gigantes: I am going to rework our section 12. If you have an amendment in addition to that one you have tabled on section 32, why do we not look at them both?

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- Mr. Chairman: It would really simplify things if you could negotiate some kind of agreement and come in with the package. If you could do that, we could perhaps find some common ground. It would also be highly unusual.
- Mr. Ward: I was just suggesting where it should be, not what it should be.
- Ms. Caplan: I think the intention is that we could then complete section 12, acknowledging that we can deal with this very same issue under section 32. If that is acceptable to the NDP, we could complete section 12 at this time and stand this down to be dealt with at the time we deal with section 32.
- Ms. Gigantes: Can I ask that we get a comment from legal counsel on this?
- Mr. Revell: In reworking this, Ms. Gigantes, there is no reason that it could not be structured as an amendment to the government amendment and make it part of section 32a.
  - Ms. Gigantes: The one that has been tabled already?
- Mr. Revell: Either the one that has been tabled already or what the government may decide to table later. In either case, we can look after this particular subject matter at a later stage, and it would be equally in order there or here. In the light of the stage we are at, I would recommend that this be considered as part of section 32a. I can receive your instructions over the lunch hour with respect to changes.
- $\underline{\text{Ms. Gigantes:}}$  I will accept the recommendation of legal counsel. If you would like to proceed on that base, fine. We have an amendment to subsection 12(6).
- Mr. Chairman: I will dispose of subsection 12(5) first. Shall 12(5), as amended, carry? Carried.
- Ms. Gigantes moves that subsection 12(6) of the bill be struck out and the following substituted therefor:

"(6) In the case of an establishment where employees are represented by a bargaining agent, the examination under clause 1(c) shall include comparisons between jobs in the bargaining units and jobs outside the bargaining units."

Ms. Gigantes: The object of this amendment is to make sure that in an establishment where there is a bargaining agent, the comparisons will not necessarily be confined to within the bargaining unit and without the bargaining unit.

We know that frequently in establishments, the people who are members of unions are men, and their whole wage schedule is at a higher level than those unorganized women who also work in the same establishment. For purposes of comparison, we feel we should indicate in the legislation that in such an establishment, where there is a bargaining unit, cross-bargaining-unit comparisons shall be expected under this legislation.

Mr. Ward: I believe we dealt with this issue yesterday.

Ms. Gigantes: In a different way.

Mr. Ward: In a different way, but it is virtually the same substantive matter.

Ms. Gigantes: Not necessarily.

Mr. Ward: If you can explain to me how it is different, in a convincing fashion--

Ms. Gigantes: This amendment does not deal with every establishment. It deals only with those establishments that have a bargaining agent. Our amendment yesterday dealt with every establishment.

Mr. Ward: But the only time the movement from within the bargaining unit to outside the bargaining unit would happen under the bill as it is written would be if there are bargaining units.

 $\underline{\text{Ms. Gigantes}}$ : If you want to vote against this one, you are free to do so.

Mr. Polsinelli: On a point of order, Mr. Chairman: This subsection 12(6) does not even relate to the 12(6) that is being removed from the act, does it? It does not make sense to me, throwing something out and then--

Mr. Chairman: There is a question as to whether or not it is in order, but I sure did not want to go through that debate again.

If you are ready to vote on it, I will call the vote.

Motion negatived.

Mr. Chairman: Shall subsection 12(6) carry? Agreed.

Subsection 12(7)--

Ms. Caplan: I believe there is a subsection 12(6a).

Mr. Chairman: Yes, I am sorry. There is a subsection 12(6a).

Ms. Gigantes moves that section 12 of the bill be amended by adding thereto the following subsection:

"(6a) Notwithstanding subsection (6), pay equity plans in the public sector shall provide for adjustments in compensation such that the plan will be fully implemented not later than the fifth anniversary of the effective date."

Ms. Gigantes: We have dealt previously with the question of whether all pay equity plans should be implemented within five years of the legislation. Having lost that proposition, we are proposing that at least within the public sector the implementation period should be five years from the effective date. We feel that if there is ever an argument to be made for government setting a model in the area of social legislation, this is the time for it to be set.

We know that under the legislation pay equity adjustments may go on over a period of 10 to 20 years before women under this legislation who have the benefit of this legislation will achieve what is defined in the bill as pay equity.

What we are suggesting is that at least in the public sector we should make sure that the achievement of pay equity is within five years.

I should also point out that an amendment of this nature was passed in discussion of Bill 105 dealing with the public service and the public sector. In fact, it was moved by the Conservative members of the justice committee at that time.

Ms. Caplan: I would like to speak to this and in doing so explain the impact of this motion. The intent of the motion is that from the effective date, which would be the date of proclamation, there would be two years until the adjustment date begins and then three years thereafter in order to complete in five years.

The expectation of the government is that in fact it will be two years till the implementation date and then four years for the payouts, with an expectation of one per cent per year over four years. This would place an additional burden on the consolidated revenue fund which is not anticipated and would accelerate the payouts.

The commitment of the government is to one per cent a year for four years, and this would shorten it by one year. We cannot support that because the payout is planned over four years and that is the adjustment the Treasurer has committed to.

Mr. Chairman: Mr. Charlton moves that the amendment be amended so that the word "fifth" in the second-to-last line be struck and replaced with "seventh."

We have an amendment to the amendment. Would you speak to the amended amendment at this point?

Mr. Barlow: Perhaps the parliamentary assistant could tell us what effect that has.

Mr. Ward: The bill as it is written does not put a time limit in terms of the employer's obligation to complete the process of making the wage

adjustments. It provides for a minimum allocation of one per cent of total payroll per year. The effect of the amendment would in fact be to put a cap on the amount of time that it would take; a cap, in effect, of five years. I think you would concede that, because there are two years given to them to generate their plan and then the payouts would be shrunk to within a five-year period.

The amendment applies to all public sector agencies, municipalities, school boards, hospitals, universities, etc. There is a potential for significantly greater wage adjustments than one per cent per year on those public sector agencies, because it compresses it all and puts a cap on the time line. I think we dealt with this in terms of the bill in an earlier amendment when you put a motion, I believe, to cap all adjustments over a five-year period.

Ms. Gigantes: That is correct.

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Ms. Caplan: When I was speaking to this, I was talking specifically of the impact on the Ontario public service and what our expectation is, given the knowledge we have of the OPS, which was covered in Bill 105. This goes beyond, as the parliamentary assistant pointed out, and we do not know until we see the plans what the impact is likely to be in the public sector. Because the legislation states the one per cent, this may run contrary to that since we just do not know what exists out there.

Mr. Chairman: The explanation that Ms. Caplan has just given the committee is the reason I am not ruling it out of order as I did the previous motion. There is a potential for an acceleration of the payout. Just in a quick, narrow interpretation of what is proposed here, it is not known what the impact in dollars will be. I suspect it will increase the burden on the government in a shorter time frame. That is a suspicion I have. However, it is a little bit unknown and a little bit cloudy, so I am allowing the amendment to show my goodwill towards Ms. Gigantes, who had trouble with the last motion.

Mr. Baetz: I wonder if the movers of the amendment to the amendment would clarify or expand their view a little more on this.

Mr. Charlton: Simply, the amendment to the amendment was moved because our intention was that the plan period be five years. As the parliamentary assistant has already explained to you, there are two years in this piece of legislation in which the plan is being developed, and then our amendment says five years for the implementation of that plan.

Mr. Baetz: In effect, government would have a seven-year lead time. In other words, as of the implementation of this bill, it knows what it might expect, within reason, in seven years.

Mr. Ward: The way the bill is written, a public sector agency has two years to develop its plan, whether it be a municipality or whatever. A municipality can develop its plan over a period of two years. Once it has a plan, it knows that its costs are a minimum of one per cent of total payroll per year.

Hypothetically, if there was a public sector agency or a municipality or whatever that had to make a significantly greater wage adjustment than would be offset by one per cent a year, this would have the effect of increasing the

wage adjustments beyond the one per cent. It might have to come up with two or three per cent a year, depending on the circumstance, but that again would be a hypothetical situation. The extent to which those circumstances exist really is not determined until the pay equity plans are formulated and the analyses are done, but it could have a very significant impact on a municipality or a public sector agency.

Ms. Gigantes: The parliamentary assistant has just said that the bill as written allows public sector agencies two years to develop a plan. I do not believe that is true. The bill as it now stands requires the development of plans within a one-year framework. There is a government amendment which would remove the notion of the mandatory posting date at one year or two years or three years under the phase-in scheme of the bill.

Mr. Ward: Would you concede that the wage adjustments take place after two years?

Ms. Gigantes: The wage adjustments begin at the two-year period for public sector employees. The reason we have moved this subamendment to this amendment is that the wording has now exactly the same nature as the motion that was put forward by Phil Gillies, former member of the justice committee, when we were dealing with Bill 105 for the public service. It was exactly that amendment that he proposed, and he proposed it because, having looked at the chart I presented to the committee earlier in our discussions and having seen that in various circumstances it can take many years for women to achieve what is called pay equity under this legislation, he decided that our amendment, which was proposed at that time, to increase the minimum payroll allocation to three per cent of total payroll per year, was not the way the Conservatives wished to approach the question and it would be preferable from the Conservative point of view to put a time frame, an outside limit, on the period of implementation. It was his motion that the period of implementation be designed as a five-year period.

Could I just make a couple of other comments? The comments Ms. Caplan made about the charge on the Treasury really strike me as rather funny at this stage. They are funny and they are sad.

I have no doubt that when this government sits down to negotiate, for example, with its public service, the tradeoff is going to be annual general wage increases for equal pay adjustments. The workers in the public sector will be called upon by this employer and other public sector employers to contribute to the costs of equal pay adjustments.

That will be asking men in the public sector to contribute to the cost of equal pay adjustments for women; it will be asking women working in the public sector to contribute to the cost of equal pay adjustments for themselves, in some cases.

We cannot say how much the charge on the Treasury is going to be, and if this government would indicate to us, which it has never been willing to do, that it would bear those costs outside of normal annual wage increases, then we would be talking about a different subject. But this government has never been willing to do that, and in fact we have had the Attorney General (Mr. Scott), whose responsibility this bill has been, indicating quite the opposite. He has gone publicly to the private sector and said, "Take the increases out of your general annual wage increases," which goes against the principle that has been internationally established; that pay equity, equal pay for work of equal value, should not be a charge on male employees, nor should it be a charge on female employees.

That is an argument that holds no water with me when Ms. Caplan puts it forward, and I think the chair has been very wise not to attempt to make a ruling on that.

Mr. Barlow: I think there seems to be a little bit of sucking and blowing going on by the government. On this amendment, they are concerned about the municipalities, school boards and hospitals in stepping up their adjustment period. On the previous amendment that was ruled out of order, they were not at all concerned, "Let them go ahead and make the adjustments." I just wanted to make that as a point. There is a little bit of inconsistency on the part of the government.

Mr. Ward: I do not think there is any inconsistency whatsoever. The impact will be borne by public sector agencies and I cannot, nor can anybody else, say the extent to which those public sector agencies will have to make wage adjustments or how long it would take ultimately to achieve pay equity.

All I am saying is that the effect of this is to shrink the time line, so that those increases would not be limited to the one per cent figure that has been in this bill for every employer in this province. Every employer in this province is mandated to provide a minimum of one per cent for wage adjustment. The effect of this amendment is to take out that one per cent limit for public sector agencies. That is all I am saying.

Ms. Gigantes: Every employer--

Mr. Ward: Every public sector employer in the province.

Mr. Barlow: The point I was making there was that you and Ms. Caplan did express a concern about the bill, for the municipalities and broader public sector employers to pay on a step-up basis.

Mr. Ward: The argument was, quite frankly, the reverse. We recognize the impact this legislation or any legislation can have in terms of the demands that might be forthcoming from those public sector agencies that rely on transfer payments for at least a portion of their revenues. All of us around here know the reality of the impacts of things like that, and the argument previously was whether the costs associated with the achievement of pay equity for female employees should be borne strictly by the consolidated revenue fund or whether they should be borne by the revenue base that has been in existence for ever.

### 12 noon

Mr. Barlow: Although we did not debate that motion, your answer on that was, "Let them take it out of their own tax base."

Mr. Ward: No. I think the answer on that was, "Let them take it from the sources that generate that revenue."

Mr. Barlow: That is right; that is the municipal taxpayer.

Mr. Ward: No; including transfer payments, because transfer payments represent a good portion of their revenues.

Mr. Barlow: Of course, the reputations of this government and its transfer payments are going down all the time, not up.

Mr. Ward: I would not be too sure.

 $\underline{\text{Mr. Barlow:}}$  Let us not get into that debate. I can cite you the case of my own municipality, Cambridge, for example, but I will not.

Mr. Ward: Is that on unconditional grants?

Mr. Barlow: That is on unconditional grants.

Mr. Ward: That is strictly a formula; it is not a judgemental.

Mr. Barlow: It is dollars too.

 $\underline{\text{Mr. Polsinelli:}}$  In speaking to this amendment, I think we are losing sight of one particular fact, that this legislation is the most progressive legislation in North America.

Dealing particularly with this amendment, if we look at the other jurisdictions that have implemented pay equity in the public sector, Minnesota has taken one per cent per year to allocate towards achieving pay equity. Minnesota has said that after four years, the adjustments stop; it has put a cap on it. If we look at another Canadian province, Manitoba, it has taken exactly the same type of approach. They have said, "We will allocate one per cent per year towards achieving pay equity, but after four years, the adjustments will stop."

Both of those jurisdictions that have implemented pay equity legislation have put a cap on the increases. This legislation is completely open-ended. It says that if the gap is four per cent, then we will close it after four years; if it is six per cent, we will close it after six years; and if it is greater than that, whatever the time period it takes, that is how long it will take to close, but we will close it, because the legislation does not put a cap on the increases.

What this is saying is that we have to close that gap within a five-year period after the effective date. Would the New Democratic Party be just as happy in putting a cap on our legislation, as they do in other jurisdictions? I think not. If you are not prepared to put a cap on the increases, if you are not prepared to terminate the adjustments, then why not just leave the legislation the way it is? Leave it open-ended, so that if the gap is a six per cent gap, it will close in due course without putting that much of a strain on the public Treasury.

Ms. Gigantes: The allusions that have been made to other equal pay plans are based on the experience of different jurisdictions. In fact, in Manitoba, when they incorporated some facets of legislation that we do not have here, some facets that we have imitated in this legislation, they were not based on grabbing figures out of the air; they did some studies before they did it. Nobody in this government has been able to indicate to us that within a five-year period they are going to be able to close the gap.

We would like to ensure that at least in the public sector there is a model set so that the undertaking to provide what in this bill has become pay equity instead of equal pay for work of equal value is one that will be met within seven years of the passage of this legislation. If that seems like a headlong rush to the members of this committee, I think it will seem very slow to women in Ontario.

Mr. Ward: Did I misunderstand or was the point that the wage gap in Manitoba is less than it is in Ontario?

Ms. Gigantes: The parliamentary assistant must have access to all kinds of information of that nature.

Mr. Ward: I think we do, and I think we tabled it.

Ms. Gigantes: What I do know is that in Manitoba when you address the pay gap in the public sector, you are addressing an awful lot more of the employment for females in the province than you are here, because the public sector as a proportion of the economy is larger in Manitoba. This is a very different kind of economy we have here. What we are talking about in this amendment is what will happen to roughly 350,000 women who, if they pass the test set out in this legislation, might be eligible for pay equity adjustments. We are saying that seven years from the passage of this bill, the process should be finished.

Mr. Ward: Just one quick point of clarification: Is it not true that the Manitoba legislation does not include the broader public sector and that in addition, with the incumbency rules in effect, thousands of female employees would get no recourse whatsoever.

Ms. Gigantes: It is true that it does not cover all of the public sector. It was nevertheless the first proactive plan in Canada and it covered a major portion of the public sector. Furthermore, in the speech from the throne, the government has announced its intention to cover all economic sectors. If Manitoba can afford it, I am assuming that Ontario can.

Mr. Polsinelli: If I could have the floor for a few more minutes, I think the intent of this discussion has not been to compare the Manitoba legislation, or the Minnesota legislation for that matter, with the Ontario legislation. All three pieces of legislation have their good points. All three pieces of legislation have perhaps some points that are variant in some details. I hope the Ontario government, in drafting this legislation, has been able to learn from what the other two jurisdictions have done.

However, this amendment is putting a period of five years wherein pay equity has to be achieved.

Interjection.

Mr. Polsinelli: Well, five years after the effective date. That has not been done in any of the other jurisdictions.

Ms. Gigantes: As amended, it is five years after the beginning of the pay equity instalments, so it would be seven years as we have amended it.

Mr. Polsinelli: But that has not been done in any of the other jurisdictions. In fact, the other jurisdictions have taken a completely different approach. They have said, "We will take one per cent of the previous year's payroll for four years, and after four years, whatever portion of the gap has been closed, that is fine; whatever has not been closed will remain unclosed." This legislation has taken the approach of leaving it open-ended, and whatever the gap is will be closed.

Ms. Gigantes: That has happened in Minnesota. Furthermore, in Manitoba, these decisions were negotiated, as you are aware.

Mr. Polsinelli: The point I am simply trying to make is that in drafting that other legislation in the other jurisdictions, they tried to strike a balance between achieving pay equity, closing the gap, and minimizing the impact on the public purse. I think effectively this is what this legislation is doing also.

By putting a period of time wherein the gap has to be closed, you do not know what the consequences of it are going to be. You do not know what the impact on the taxpayers is going to be, particularly perhaps in some of the smaller municipalities that may have to take up some money to close the gaps, and particularly in those municipalities that have not been as forward-looking, for example, as the city of Toronto, which has already introduced a pay equity plan.

So you have to balance, on one hand, achieving pay equity, closing the gap, and on the other hand, minimizing the impact on the public purse. I think the legislation we have before us does it very well.

Ms. Gigantes: If you were concerned about municipalities and public sector employers in terms of the implementation of this bill within a reasonable time framework, then you should have supported our amendments on guaranteeing transfer payments to cover those costs.

Mr. Polsinelli: That is another issue.

Ms. Gigantes: They are totally related.

Mr. Polsinelli: They are not totally related. I disagree with you.

Mr. Chairman: We are getting into cross-debate now, and I think we have had adequate time to consider the amendment.

Mr. Baetz: Mr. Chairman, on a point of order: I should have left 10 minutes ago. Could I ask the indulgence of the other members of the committee and yours, sir, if perhaps we could vote on this right after we get back at two o'clock?

Mr. Polsinelli: Why do we not vote now and adjourn?

Mr. Chairman: All right. There are two votes before us. We have the amendment to the amendment. To tidy that up, why not incorporate that in your--

Interjection.

Mr. Chairman: The amendment you are proposing is your own party's amendment. Rather than vote twice, why not incorporate that in your main amendment, which is the alteration of the figure "fifth" to "seventh" and, having done that, we will not have an amendment to an amendment. Would you agree to do that?

Ms. Gigantes: Absolutely.

Mr. Chairman: Okay. We will cancel the amendment to the amendment, incorporate the number change as proposed by Mr. Charlton, and we will table that vote this afternoon at your request and at the concurrence of the other committee members.

Mr. Ward: Could we also make a determination as to whether this

amendment is in order, given the fact that I believe we passed subsection 12(5), which effectively establishes a limit of one per cent of payroll? This has the impact of changing that and is inconsistent with 12(5).

Ms. Gigantes: That is a matter the committee might want to reopen as far as the private sector is concerned.

Mr. Chairman: Is it the wish of the committee that we adjourn now until two o'clock, or do you want to continue on?

Mr. Pierce moves that we adjourn until two o'clock. We will take a break now.

The committee recessed at 12:10 p.m.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PAY EQUITY ACT
TUESDAY, APRIL 7, 1987

Afternoon Sitting

# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Barlow, W. W. (Cambridge PC) for Mr. Rowe

Davis, W. C. (Scarborough Centre PC) for Mr. Partington

Pierce, F. J. (Rainy River PC) for Mr. Rowe

Clerk: Mellor, L.

# Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Legislative Counsel

Evans. C. A., Research Officer, Legislative Research Service

#### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, April 7, 1987

The committee resumed at 2:10 p.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

On section 12:

Mr. Chairman: Good afternoon, members of the committee. I believe we are ready to resume debate on Bill 154. When we completed our discussions this morning, we were at subsection 12(6a). Mr. Baetz has indicated he wants to raise some further questions with respect to this issue.

Mr. Baetz: I was wondering whether the parliamentary assistant, the staff or perhaps our informed colleagues from the New Democratic Party could give me some information to confirm observations I have heard over the last few weeks, namely, that the issue, the problem, is not all that great in the broader public service, that it is not likely to be as great there as it might be in some sectors of the private sector. The reason I would like to have that confirmed is obvious. If it is not a big problem, it may be something one can solve in a short period of time.

Mr. Chairman: Mr. Ward, do you have an opinion with respect to that question?

Mr. Ward: Not really. As I indicated before the lunch break, in the absence of the documentation and the pay equity plans, sector by sector, it would be very difficult to determine whether shrinking of the time line in this regard would have a significant financial impact. You are asking me in terms of a general opinion or perception. I am reluctant to respond to that.

Mr. Baetz: You only provide well-informed responses; is that it?

Ms. Gigantes: He does not know.

Mr. Ward: I do not know.

Mr. Pierce: What motivates the amendment to begin with? Is there a feeling out there that there are such a large number of people in the public sector that it would take more than five years to bring them up to pay equity?

Ms. Gigantes: We can not estimate any more than the parliamentary assistant how long it is going to take under this bill to achieve what is called pay equity under this bill, but it does seem to us that to set a time line of seven years from the passage of this legislation is reasonable. We would have supported the same kind of amendment—as you know, we put it forward—for the private sector too.

We think that women in Ontario have waited an awfully long time. For us

to be sitting around looking at legislation that says that for the women who may receive pay equity adjustments under this legislation, the period of adjustment can go on over a decade or more, is ludicrous. If we mean to do it, we mean to do it and it should be done.

Mr. Pierce: It is conjecture to say a decade or more.

Ms. Gigantes: Certainly it is conjecture.

Mr. Pierce: Unless we can identify it in numbers of people where the spread is all that great, to be able to say a decade--it could take two decades; it could take two years.

Mr. Ward: The entire motivation --

Ms. Gigantes: The estimate, certainly in the public service where the government believes the gap is the least, is that the period that will be required is something it does not want to put a deadline on. We have just picked five years for implementation starting from two years after the anniversary date when the first payments would have to be made. We have said the payments should be made so that after five years the job is done. Whatever job it is that is going to get done in this legislation, let us get it done.

Mr. Chairman: I want to ask the parliamentary assistant whether there is any jurisdiction anywhere in the world that he is aware of where there is a limited time frame such as is being suggested here, where there is a de facto cutoff point, where all the problem has to resolved within a five-year period or a seven-year period.

Mr. Ward: There is none that we are aware of. The whole rationale behind establishing the one per cent from the outset, the one per cent that applied to all sectors was that we all recognized there are costs and a financial impact in achieving pay equity as contemplated by this bill. The reason for the one per cent cap was to limit to the extent that it could whatever dislocation may occur out there. It was a valid attempt to put forward legislation that has a significant impact throughout the marketplace in a way that was fiscally responsible.

If you are asking whether the impact likely to be less in the broader public sector than in the private sector, on the basis of conjecture I could say that in my opinion it is likely to be less than it is in the private sector. However, we felt we had established the same mechanisms for everybody, which was one per cent of payroll per year in terms of implementation and we have tried to maintain that consistency throughout the bill. Other than time lines, there are no great differences between the legislation for the private sector and the legislation for the public sector.

Mr. Chairman: For members of the committee who were not able to be here at the completion of this morning's discussion, we are on page 40a of the New Democratic Party's amendments. We were able to get the movers of an amendment and an amendment to an amendment to change what is before you in subsection 12(6a) to read exactly as it is on the page, with the one exception that in the second to last line, the last word "fifth" has been changed to "seventh." Therefore, the amendment to the amendment has been removed and we are dealing with one motion only. I say that particularly for Mr. Davis and Mr. Baetz who were not here. If you have that alteration to the amendment, I believe we are about ready to vote on it unless there is any further comment.

Seeing no further comment, I will now call for your position with respect to subsection 12(6a).

All in favour, so indicate. Opposed?

Motion agreed to.

Mr. Charlton: Goodness.

Mr. Ward: There has just been a tremendous shift in the balance.

Mr. Chairman: There is a new game in town, obviously.

Mr. Baetz: What is that?

Mr. Chairman: I just noticed it had an entirely different alignment than any I have seen in the past.

Mr. Baetz: Always doing what is right.

Mr. Chairman: All right. We are back to Ms. Gigantes now with subsection 12(7).

Ms. Gigantes moves that subsection 12(7) of the bill be amended by striking out "wages and salaries" in the first and second lines and inserting in lieu thereof "compensation."

Ms. Gigantes: We are trying in a small way to increase the amount of equal pay adjustment available to women under this legislation. The legislation as it is before us says that the employer shall provide a minimum of one per cent of total annual payroll to the allocations known as pay equity adjustments to meet the pay equity gap. We are suggesting that "payroll" in this context be read as "compensation," all inclusive of benefits and so on, and not simply as "wages and salaries."

Mr. Ward: The bill as written makes a direct reference to wages and salaries in terms of the determination of the amount of wages that is to be considered part and parcel of determining the one per cent. I really do not understand the rationale behind the change in compensation, if compensation is to include whatever expenditure may be associated with that employment, whether it be clothing allowances or whatever, because I think it is fair to say the assumption is that those kinds of elements of the compensation package surely are free of gender discrimination. I really do not understand the intent of the amendment, other than to increase the amount of money.

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Ms. Gigantes: That is the intent. I just said it was.

Mr. Ward: Do you want to add anything more to it?

Ms. Herman: One of the differences in adding benefits would be to require all employers to compute the value of benefits to all the employees in the establishment. The scheme of the bill at the moment would require a computation of benefits only in those job classes that are being compared because compensation is included in the calculation of whether there is pay equity. Benefits are included at that point in time and considered relevant. What an amendment to the payroll and extension to compensation would mean is

that the calculation of benefits would have to be done not only for employees whose job classes were being compared but also for all employees in the establishment.

Mr. Pierce: Can you give me a definition of "compensation"? What does compensation involve?

Ms. Gigantes: We will be dealing with definitions of "compensation" when we get to the definitions under this legislation.

Mr. Pierce: But if we are treating words now in the bill prior to the conclusion of what the words are going to mean, are we not putting the cart in front of the horse? It would be nice to know what we are voting on if we are agreeing to change some words that are in the act.

Ms. Gigantes: We have those that have been tabled, which you can take a look at.

Mr. Pierce: Would it not be of value to know what the words mean before we insert them in the act?

Ms. Gigantes: Mr. Chairman, I can be helpful on this. We have tabled an amendment concerning the definition of "compensation," have we not? It is on page 4 of our amendments. If the committee is agreeable, we would like to see compensation defined as "all forms of wages, salary, benefits and perquisites paid or provided to or for the benefit of an employee in a fixed or ascertainable amount in respect of any work performed for his or her employer."

That means all that you can calculate in terms of the cost of employment to the employer.

Mr. Ward: That would include protective clothing and everything.

Ms. Gigantes: Yes.

Mr. Ward: Every employment cost.

Ms. Gigantes: If it is a benefit.

Mr. Chairman: Are there further questions or comments? I will call subsection 12(7).

All those in favour of subsection 12(7)? All those opposed?

Motion negatived.

Mr. Chairman: Subsection 12(8).

Ms. Gigantes: No, that is one of the ones that was taken out.

Mr. Chairman: Subsection 12(9).

Ms. Gigantes: I believe that, too, was removed. It is subsection 12(10), if that is where the committee is at. We removed subsections 12(8) and 12(9).

Mr. Chairman: Could we do subsections 12(7), 12(8) and 12(9) as

printed so that we can carry on? I guess we are at subsections 12(7) and 12(8). We are just dealing with subsection 9, are we not?

Ms. Gigantes: No, that was withdrawn.

Mr. Chairman: That was withdrawn as well? Sorry. Having done that, could we then vote on subsections 12(7) 12(8) and 12(9) as printed? All in favour? Opposed? Carried. Subsection 12(10).

Ms. Gigantes: My inclination is to vote against subsection 12(10) because it strikes me as unreadable, but I am sure there must be a way of understanding it. I seek some help.

Ms. Marlatt: The intent of subsection 12(10) was that an employer who was in the process of preparing and implementing a pay equity plan would not be found to be in violation of subsection 6(1). Subsection 6(1) says that an employer must "establish and maintain compensation practices," so that employees have a complaint against an employer who has not established and maintained compensation practices. The intent of subsection 12(10) is that during the development and implementation of a plan, you do not have a complaint under subsection 6(1).

Ms. Gigantes: Can I ask about those employers who have establishments of fewer than 100 employees? After six years, it will be possible--six years or seven years after the anniversary date; give me the right year.

Ms. Marlatt: The fifth and sixth years.

Ms. Gigantes: It will be possible for an employee to lay a complaint that would trace that to subsection 6(1).

Ms. Marlatt: That is right. That is in part III under subsection 20(1). There is a parallel to subsection 12(10) in intent.

Ms. Gigantes: If an employer files under section 19 that he is going to establish an equal pay plan, he is immediately protected under subsection 12(10) from the filing of a complaint that would trace back to subsection 6(1).

Ms. Marlatt: But he is also protected under subsection 20(1). Even if he does not file to be proactive, the complaints cannot start until the fifth and sixth anniversaries.

Ms. Gigantes: I understand that, but suppose at year 6 an employer with fewer than 50 employees says he is going to create a plan under section 19. Having given notice under section 19 and being protected by subsection 12(10) from a subsection 6(1) complaint, how long does he have to create the plan?

Ms. Marlatt: I do not think he has any protection beyond the fifth and sixth years. If his intent is to be proactive and therefore participate under section 2, he does so to meet wage adjustment dates that are the fifth and sixth anniversaries, so there is no additional stay beyond the fifth and sixth anniversaries. The proactivity has to take place in time for the fifth and sixth anniversaries.

Ms. Gigantes: He would have to file before the fifth and sixth

anniversaries and have the plan in place by those anniversaries in order to be protected under subsection 12(10).

Ms. Marlatt: Yes.

Ms. Gigantes: Otherwise, his employees will wait for the fifth and sixth years, 50 to 100 employees or 10 to 49 employees, to be able to lodge a complaint.

Ms. Marlatt: The effect of getting pay equity in those two sizes of organizations is the same whether it is by proactivity or by a complaint.

Ms. Gigantes: Can you tell me that there is any real incentive under subsection 12(10) for him to say he is going to prepare a plan under section 19? What would be the incentive?

Ms. Marlatt: I do not think there is an incentive to say it and not do it.

Ms. Gigantes: Is there any incentive to create a plan that you see following from 12(10)?

Ms. Marlatt: There is the one per cent phase-in. If he is implementing under a plan, he has the protection of a one per cent phase-in. If he otherwise does nothing and there is a complaint, then the payment is due fully as of the fifth and sixth anniversaries, if he was not in compliance at the fifth and sixth anniversaries. It is the business of knowing what the costs will be and phasing in the plan.

Ms. Gigantes: Thank you. That is very helpful. I will support 12(10).

Mr. Chairman: Are you going to withdraw your objection to it? We do not really have an amendment.

Ms. Gigantes: There is no amendment.

Mr. Chairman: The amendment is to remove 12(10).

Ms. Gigantes: It was a recommendation and I am now indicating that I will be supporting subsection 12(10).

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Mr. Chairman: Okay. Is there any further comment? All in favour of 12(10)? That is carried.

Ms. Gigantes moves that section 12 of the bill be amended by adding thereto the following subsection:

"(11) Every employer shall make available to employees all information necessary to exercise full rights and responsibilities under this act including information on job classifications, job descriptions and rates of compensation to ensure that the employees are able to assess the adequacy of all pay equity plans for the employer's establishment."

Mr. Ward: I believe we voted on a virtually identical amendment yesterday.

Ms. Gigantes: This is an amendment which would apply to all establishments where an equal pay plan was being put into effect, and it would require employers to make available the information necessary to assess the adequacy of the plan.

Mr. Ward: How does that differ from yesterday's amendment?

Ms. Gigantes: I have forgotten about yesterday's amendment.

Mr. Charlton: It covered the whole waterfront. It was not just where there were plans. It was not under the plan section.

Ms. Gigantes: Yesterday was yesterday. Today is today.

Mr. Ward: I am tempted, but I will not use a line from Gone with the Wind.

Needless to say, we do not support this, nor did we support yesterday's amendment in this regard.

Ms. Gigantes: Unless there is an immediate indication from the Conservatives that they would like employees to have information that would allow them to assess the adequacy of pay equity plans, I think we might as well vote on the matter.

Mr. Chairman: Is there any comment with respect to the Conservative position? This is an addition to section 12, an added subsection 11. If there is no comment, then I will call the vote. All in favour of adding subsection 12(11) to the bill? All those opposed?

Motion negatived.

Section 12, as amended, agreed to.

On section 13:

Mr. Chairman: Ms. Gigantes on subsection 13(1).

Ms. Gigantes: That has been withdrawn.

Mr. Chairman: Shall subsection 13(1) carry? Carried.

You have an amendment on subsection 13(2).

Ms. Gigantes: No, the government has an amendment on subsection 13(2).

Mr. Chairman: Ms. Caplan moves that subsection 13(2) of the bill be amended by striking out "mandatory posting date" in the third line and inserting in lieu thereof "the date applicable to the employer under subclauses 12(2)(e)(i) to (v)."

Is there any comment on that amendment?

Ms. Gigantes: Simply to make the point that we made yesterday. What we are doing in all these amendments that affect the mandatory posting date is to give each employer another year in which to post a plan. The previous statement in the bill had been that there was a requirement to post a plan at

a certain date and to seek from the commission the right to extend the time in situations where time was a problem.

We certainly preferred the way it was stated in the bill originally. That is all.

Ms. Caplan: Just as a reminder to all members of the committee, rather than going into the full discussion, this was in response particularly to the Council of Ontario Universities, the Ontario Public School Trustees' Association, the Association of Municipalities of Ontario and the Business and Professional Women's Clubs of Ontario who came forward and talked about the difficulty of a large employer with multiple bargaining units in being able to meet the one-year time line and the reflection of the reality.

This does not relieve the obligation to begin payouts after two years. It does recognize the time that may be required—and I use the word "may"—to fully negotiate and reduce the number of either extensions or appeals to the Pay Equity Commission, so that was the purpose of this amendment. It does not relieve the obligation.

Ms. Gigantes: It does not relieve the obligation to make payouts as of the date set out in the schedule; it does remove the obligation to post the plan, as of the date set out in section 9. Those organizations which came before this committee and asked for more time had the avenue through the printed bill of asking the commission for an extension of time. I doubt they would have been denied it. Enough said.

Ms. Caplan: Just to note, there is still the obligation to post the plan.

Ms. Gigantes: Yes, a year later.

 $\underline{\text{Ms. Caplan:}}$  No, it is at any time within that period before the effective date--

Ms. Gigantes: The obligation begins at two years--

Ms. Caplan: That is right. To clarify, there is the obligation to post the plan.

Mr. Ward: We want to reiterate that during the course of the public hearings we held on this bill this was a primary concern of, I think it fair to say, mostly broader public service agencies, which have the quickest requirement, in order to comply in a concern that with the number of bargaining units there was no flexibility whatsoever in terms of getting the plan posted. It is fair to say that there is more flexibility--

Ms. Gigantes: What do you mean, "there was no flexibility"? There was originally in this bill an avenue to ask for an extension of time to post the plan.

Mr. Ward: There is an avenue that requires an appeal to the commission. That is fair to say, and the intent is to provide more flexibility; that is the intent of the amendment without having to go through that formal--

Ms. Gigantes: The effect of the amendment is to say to public sector employers you can post your plan in two years instead of one. That is my point.

Mr. Ward: It does not relieve them in terms of the financial obligations of making the adjustments.

Ms. Gigantes: It has everything to do, though, with the question of whether you are going to make a complaint about the plan as an employee and so on.

Mr. Charlton: And whether you have any option of perhaps resolving that complaint before the plan goes into effect.

Mr. Ward: We were all here for the discussion that took place-

 $\underline{\text{Ms. Gigantes:}}$  We do not like it, that is all, vote it down. Let us go.

Mr. Ward: --for the input and it is clear, you either agree or disagree.

Ms. Caplan: There was one other point to the rationale, just to remind those members who were not here at the time, and that was, the reality is that the number of employers that will be negotiating their plans with their bargaining agents and therefore will not require the appeal period time that was orginally anticipated, is the overwhelming majority of the ones that we are dealing with in the broader public sector. That was part of the rationale as well. Once the plan is posted, it will be confirmed because it has been negotiated. Okay?

Ms. Gigantes: I do not see the relevance of that.

Ms. Caplan: Let us vote.

Mr. Chairman: We are voting on subsection 13(2). May I note on the government's motion there is a typo, third line, starting at the beginning of the quotation marks where it says, "the date." Remove the word "the." That is the typo. That is what we will be voting on, then, with that small revision. All in favour of the motion? Opposed?

Motion agreed to.

Mr. Chairman: Ms. Gigantes moves that subsection 13(2) of the bill be struck out and the following substituted therefor:

- "(2) The employer and the bargaining agents representing employees in the establishment shall negotiate in good faith and endeavour to agree, before the mandatory posting"--I do not know what to do with the "mandatory posting date" there, I will come back to it, if we can get agreement on the concept--"date, on a plan to provide for equal pay in the establishment and, if the employer or any bargaining agent requests, such negotiations shall take place separately from regular collective bargaining.
- "(2a) A complaint respecting the bargaining agent's duty under the Labour Relations Act, or any other act under which the parties negotiate a collective agreement, to represent its members fairly shall be dealt with under the Labour Relations Act or the other act, even if the complaint relates to a matter dealt within this act.
- "(2b) Within 30 days of the effective date, the employer and the bargaining agents representing employees of the employer shall establish a

joint bargaining team consisting of at least as many bargaining agent representatives as representatives of the employer.

"(2c) Members of the joint bargaining team are entitled to time off work, with no loss of compensation, for the full time required to carry out their duties under this act and the time off shall be deemed to be work time."

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Ms. Gigantes: Mr. Chairman, the issues that are raised in these subamendments are, first, in subsection 2, the need for the possibility of separate negotiations for the pay equity plan, so that the collective agreement situation is not the situation which overrides the bargaining that takes place between bargaining agents and the employer to set up a pay equity plan.

We would like to see the legislation state that where there is a request on either side for separate negotiation which we feel would be of benefit to women, that separate negotiation should go on.

We feel that when an employer and a bargaining agent sit down in the context of creating a new collective agreement, then what we are looking at is a situation in which equal pay adjustments in an equal pay plan are going to be traded off against annual wage increases. We do not want to see that. We would like to open the avenue for separate negotiations.

Second, we are concerned that nowhere in this legislation—and the committee has defeated NDP amendments to this effect—does there seem to be any way of dealing with a situation where a bargaining agent is not fairly representative of members. We feel that there should be a methodology for dealing with that kind of situation should it arise. We can see the possibility of its arising in many traditional locals where it is the men who may be in the minority in a union local who have been the leaders in the local over many long years. There ought to be an obligation. We said so in an amendment which we placed earlier in the bill.

We would be happy to reopen that section so that in fact there is due process set out in this bill, as there should be in terms of the bad-apple employer, for dealing with a situation where women are not getting the representation they need in the setting up of pay equity plans.

The third item essentially is a request that this committee recognize that if five representatives of an employer sit down with one representative of a bargaining group, there is going to be an unequal kind of ability on the part of the employees' representative to achieve a good pay equity plan, and essentially what we are looking for is a commitment in this legislation that there should be equality of representation for employees.

We would like to see that done by setting up a joint-bargaining team with one or more collective-bargaining groups represented on that team in at least as great a number as employer representatives.

The fourth item contained in this amendment is one which would guarantee that employees who are called upon to do the work associated with setting up pay equity plans, doing the negotiating of pay equity plans with employers, would be eligible to claim the time they spent on that as work time and that this would be guaranteed within this legislation.

Mr. Chairman: Any questions or comments?

Mr. Baetz: I thought the parliamentary assistant would provide us with at least a few insights into this proposal.

Mr. Ward: Again, I think with reference to the argument that there is no requirement within the legislation for bargaining agents to bargain in good faith--

Ms. Gigantes: No, different. Bargaining in good faith is not the same as fair representation.

Mr. Ward: Okay, fair representation then. But if you refer to subsections 6(1) and (2), we believe that we do have in place the necessary safeguard in that regard.

The second point I would make is that it would seem to me that under this amendment you would provide an impetus—if not place an onus—on those bargaining agents that are representing the unionized employees within an establishment to bargain on behalf of even those unorganized employees as well. The way it reads. I believe that is the impact of it.

Ms. Gigantes: No, it does not. The pay equity plans with which they would be dealing would be pay equity plans for unionized employees.

 $\underline{\text{Mr. Ward}}$ : In terms of how it is drafted, I believe that the impact is that--

Ms. Gigantes: No. All it says is that where there is a pay equity plan being negotiated, the bargaining agents and the employer's representative shall be represented at least in the same, equal numbers on that bargaining team, which makes sense to me if it does not to you.

Mr. Ward: I see. Are there any changes --

Ms. Herman: The wording in the proposed amendment refers to plans to provide for equal pay in the establishment.

Ms. Gigantes: What are you looking at?

Ms. Herman: The fifth line down on subsection 2.

Ms. Gigantes: Yes, I corrected that as I was reading it to say "plans."

Ms. Herman: You are not proposing that it be equal pay for the entire establishment, but just for the bargaining unit that they are bargaining for.

Ms. Gigantes: It might be more than one bargaining unit.

Ms. Herman: The employees they are representing, not the whole--

Ms. Gigantes: That is right.

Mr. Chairman: Mr. Baetz, was there anything further that you needed from the parliamentary assistant in connection with this proposed amendment? I presume, then, you are prepared to vote on it if there are no further

comments. Are there any further staff comments?

Ms. Marlatt: I just have a question. Does the preamble, where you have an individual plan for each bargaining unit, still stand? This is not joint bargaining for a comprehensive plan, then, by the various bargaining agents that might be in the establishment.

Ms. Gigantes: It could be, at their choice.

Mr. Chairman: All in favour of the amendment to subsection 13(2)? All those opposed?

Motion negatived.

Mr. Chairman: Shall subsection 13(2), as amended, now carry? All those in favour? All those opposed? Carried.

Ms. Gigantes moves that subsection 13(3) of the bill be struck out and the following substituted therefor:

(3) "An employer shall provide all information necessary for the joint bargaining team to exercise full rights and responsibilities under this act including information on classifications, job descriptions, rates of compensation and compensation systems in the establishment and, at the request of an employee, the employer shall make this information available to the employee or, where the information is too extensive for reasonable duplication, shall make the information available for inspection by the employee."

Ms. Gigantes: Please amend "joint bargaining team" to "bargaining agent" in the second line. I think that the intent of this amendment is fairly straightforward and easy to understand. What we are saying is that in a situation where a pay equity plan is being negotiated by a bargaining agent, an employee who wishes to get information which will allow the employee to assess the adequacy of the agreement that may be reached about a pay equity plan, and the elements that are going into a pay equity plan, should have that information available from the employer.

We say "the employer" because it is the employer's information to begin with.

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Mr. Ward: I believe it is a reiteration of a point that has been made twice before. There is a requirement on the part of the employer to develop a plan and to meet the prerequisites of the legislation. If there is a complaint in respect of that plan, there is an opportunity and an avenue for a hearing and a natural right to request the information that is normal and reasonable during the course of that hearing. I do not see the need to place a requirement on the part of the employer not only to develop the plan but also totally to open up all personnel information in terms of the development of that plan.

Ms. Gigantes: We are not asking for all personnel information. We are asking for classifications, job descriptions, rates of compensation and compensation systems. It is not what we would call all personnel information.

Mr. Charlton: We have also put an obligation on the bargaining agent

under this legislation not to bargain for something that contravenes this act. If they do not have the information, how the hell do they know that? How the hell do they fulfil that obligation?

Mr. Ward: I believe they can fulfil their obligation to bargain for pay equity.

Ms. Gigantes: Let us vote.

Mr. Chairman: Are you ready to vote, or do you need further information on this subsection? Okay. I will call the vote on subsection 13(3).

All in favour of the motion? Opposed?

Motion negatived.

Mr. Chairman: Shall subsection 13(3) carry as printed? Carried.

Ms. Caplan moves that subsection 13(4) of the bill be struck out and the following substituted therefor:

- "(4) When an employer and a bargaining agent agree on a pay equity plan, they shall execute the agreement and the employer shall forthwith post a copy of the plan in the work place."
- Ms. Caplan: In speaking to that, I think it is straightforward and consistent with the proposal that has been put forward.
- Ms. Gigantes: Will the plan, once it has been executed and posted, be filed with the Pay Equity Commission?
- Ms. Caplan: There is no requirement for filing. If it has been agreed to and there is no complaint, posting is all that is required.
- Ms. Gigantes: If I am an employee, I get a chance to look at a posted plan, which is hung up in several places around the work place. How many places?
  - Ms. Marlatt: Documented, prominent places in each work place.
- Ms. Gigantes: Prominent places might be two or three places. Then I can go with my little notebook and try to make notes about the plan as it is hanging on the wall. I do not have a right to ask for a copy of it. If I think the plan is not good, I still may not have all the information on pay schedules, compensation rates, job descriptions and so on, but then I can go to the commission and complain. Right?
- Mr. Ward: Once the plan is posted, you have a specific period of time to file a complaint.
- Ms. Gigantes: Right. I can say this plan is not going to provide pay equity for me under the terms of Bill 154, this act. All I have is my ability to scratch down notes on a notepad and make up some kind of case on which to base a complaint. If the plan is not filed with the commission, I cannot go to the commission and say, "May I have a copy of the plan that I can take home and talk about to my friend who is a personnel manager?"
  - Mr. Charlton: Perhaps we could stipulate portable posting places:

Ms. Gigantes: I do not have a right to ask the employer for a copy; I do not have the right to ask the commission for a copy. The commission does not have a copy. It has not been filed with the commission.

Ms. Caplan: Could I just point out that you are talking here of when an employer and a bargaining agent agree? I assume that any member of that trade union represented by a bargaining agent would be able to approach the agent and ask for advice, assistance and explanation of what that agent has negotiated on behalf of the employee. I do not see what the problem is.

Mr. Baetz: I do not think the legislation is supposed to dot every "i" and cross every "t" in terms of detail and procedure.

Ms. Gigantes: Heaven forbid.

Mr. Baetz: The meaning of the amended motion is clear.

Ms. Gigantes: We are ready to vote.

Mr. Chairman: The government motion to subsection 13(4) is what we are voting on.

Motion agreed to.

Ms. Gigantes: I will withdraw our amendment to subsection 13(4).

Mr. Chairman: The amendment to subsection 13(4) is withdrawn.

Could I call subsection 13(4), as amended? Those in favour? Opposed? Carried.

I will go to Mr. Baetz on the amendment to subsection 13(5) and then to Ms. Gigantes.

Mr. Baetz: I think this should be withdrawn because we are back to the old question that we settled a long time ago on the Employment Standards Act.

Mr. Barlow: Unless we are going to open up section 26 again.

Mr. Baetz: We can open it up any time, but--

Mr. Chairman: You are withdrawing then?

Mr. Baetz: Yes.

Ms. Caplan: They are withdrawing amendments to subsections 13(6), 13(7), 14(7)--

Mr. Chairman: I have another amendment to subsection 13(5). Do not go too fast.

Ms. Caplan: No. I am just saying that they are withdrawing all the ones that relate to that; the ones that follow where you changed "commission" to "director."

Mr. Chairman: All right. Ms. Gigantes, your 13(5).

Ms. Gigantes: I do not see any point, at this stage, in proceeding with our 13(5).

Mr. Ward: I believe you withdrew that this morning.

Ms. Gigantes: No, I did not.

Mr. Chairman: Shall subsection 13(5), as printed, carry? Carried.

Ms. Gigantes: I will also withdraw our amendment to subsection 13(6) considering the discussion that we have had on this section of the bill.

Mr. Chairman: There is a government motion on subsection 13(6). Am I to understand, members of the committee, that both the third party and the official opposition amendments related to subsection 13(6) are now withdrawn?

Ms. Gigantes: Yes.

Mr. Chairman: Ms. Caplan moves that subsection 13(6) of the bill be amended by striking out "mandatory posting date" in the second line and inserting in lieu thereof "the date applicable to the employer under subclauses 12(2)(e)(i) to (v)."

Shall that motion carry? Opposed?

Motion agreed to.

Mr. Chairman: I am not trying to cut off debate on it. I just had a sense that you did not--

Shall subsection 13(6), as amended, carry? Carried.

Ms. Caplan moves that subsection 13(7) of the bill be amended by striking out "mandatory posting date" in the third line and inserting in lieu thereof "the date applicable to the employer under subclauses 12(2)(e)(i) to (v)."

Are you ready for the vote? Shall the motion carry?

Motion agreed to.

Mr. Chairman: Shall section 13(7), as amended, carry? Carried.

Ms. Gigantes: I will withdraw our amendment to subsection 13(7).

Mr. Chairman: The Conservative motion is also withdrawn, so we will then move on to the government motion to subsection 13(8).

Ms. Caplan moves that subsection 13(8) of the bill be amended by striking out "mandatory posting date" in the fourth line and inserting in lieu thereof "the date applicable to the employer under subclauses 12(2)(e)(i) to (v)."

Same vote?

Motion agreed to.

Mr. Chairman: Shall subsection 13(8), as amended, carry? Carried.

On subsection 13(9)--

Ms. Gigantes: On subsections 13(8) and (9), I would like to register negative votes. We are talking about a plan for the employees of an establishment where there is a bargaining agent, and this plan is a plan being drawn up to provide pay equity for those nonunionized employees of the establishment. They do not have access to any information about the employer's pay schedules, compensation rates, job descriptions, and the employer does not have to file the plan. I think those sections are inadequate.

# 1500

Mr. Chairman: Okay. Any comment on subsections 13(8) and (9)?

Ms. Caplan: I fail to follow the logic since in the posting of the plan, the plan and the information provided therein will give the employee due assurance that the act is being followed.

Ms. Gigantes: How does the employee get a copy of the plan to sit down at night and talk to somebody who knows something about this legislation and knows something about personnel matters? She stands in front of a post in the work place and tries to scribble down notes. She does not have a bargaining agent even to give her a copy or to discuss with her what kind of plan has been concocted. Her only recourse is to file a complaint with the commission and hope that the commission will look into the information and provide her with some.

Ms. Caplan: By voting against this, you are voting against the posting of a plan. I cannot imagine why you would vote against this.

Ms. Gigantes: These subsections are inadequate. We are indicating our sense that they are inadequate.

Ms. Caplan: Let us vote.

Mr. Chairman: Any further comment? There being none, the vote is on subsection 13(9).

Ms. Gigantes: Worry not.

Mr. Chairman: This will be Ms. Gigantes's motion, right?

Ms. Gigantes: No. I move that you worry not.

Mr. Chairman: Shall subsection 13(9) carry?

Ms. Gigantes: We will vote against it, Mr. Chairman.

Mr. Chairman: Opposed? Carried.

I was just trying to figure out exactly what you were doing with that. You were just indicating your intention to vote against it.

Ms. Gigantes: Our displeasure.

Mr. Chairman: Shall section 13, as amended, carry? Opposed?

Section 13, as amended, agreed to.

On section 14:

Mr. Chairman: Ms. Caplan moves that subsection 14(1) of the bill be amended by striking out "mandatory posting date" in the fourth line and inserting in lieu thereof "the date applicable to the employer under subclauses 12(2)(e)(i) to (v)."

Same vote?

Motion agreed to.

Ms. Gigantes: We have an amendment to subsection 14(1). Section 14 is the section which sets out the steps by which a pay equity plan for a nonunionized establishment is developed.

Mr. Chairman: Ms. Gigantes moves that subsection 14(1) of the bill be struck out and the following substituted therefor:

- "(1) In an establishment where no employee is represented by a bargaining agent, the employer shall develop a plan to provide for pay equity in the establishment and the employer, on or before the mandatory posting date, shall post the plan in the work place and file the plan with the commission."
- Ms. Gigantes: We have eliminated all sources of information to the nonorganized employee in the nonorganized place of employment about the plan and the information on which it is based unless we insist that the plan be filed with the commission. Then, presumably, the employee would have the right to get a copy of the plan and take it home and look at it.

I do not know if any of the rest of the committee have ever taken a look at a collective agreement, but you do not do it standing in a work place with a note pad in your hand or you do not understand it. You have to take it home and worry it through. We think that plan should be filed with the commission and, therefore, in an indirect way at least, available to an employee without the employee having to go and make a complaint to the commission.

Mr. Baetz: Could I ask if that kind of thing is likely to be covered in the regulations that will be accompanying this act?

 $\underline{\text{Ms. Gigantes:}}$  No, they just said they did not think it was necessary to file the plan.

Mr. Baetz: How does the commission find out?

Mr. Ward: Can I make a suggestion? Subsection 1(2) deals with the whole issue of posting, and we have stood down section 1.

Ms. Gigantes: Yes.

Mr. Ward: I would say that is an appropriate place where we can look at this. It will give us some time to--

Ms. Gigantes: Would you? And would you look at it particularly also in the case of the nonunionized employees in an establishment where there is also a bargaining agent? That would be very welcome.

Mr. Ward: I see your point. It is just that I really do not think

the issue is that the plan is being concealed, when there is a requirement that it be posted in prominent places in the work place. I think your point is--

Ms. Gigantes: You cannot use this.

Mr. Ward: --nobody has a plan in hand. We will look at subsection 1(2). That will cover off virtually all instances in the legislation, if we address it there.

Ms. Gigantes: Thank you.

Mr. Ward: We will see what we can do.

Mr. Pierce: I have a question for the parliamentary assistant. When you are talking about filing a plan with the commission, are you talking about making copies of the plan available to the employee?

Mr. Ward: I am suggesting that this whole issue of whether the employee has a copy in hand to deal with can be addressed in subsection 1(2). There is no anticipation or requirement in the legislation to file the plan with the commission, but I think the point that is being made is that at no point has the employee had the plan in hand to work with other than the one that is posted in the work place. I think we can find some way to address that under subsection 1(2) without it necessarily meaning filing with the commission, but I am not going to prejudge that until we have looked at it.

Ms. Gigantes: That is fine.

Mr. Baetz: We will be sympathetic to that.

Mr. Chairman: What do you want to do with the amendment in the meantime?

Ms. Gigantes: Why do we not stand it down and see what we can come up with in terms of--

Mr. Ward: I wonder if there is a necessity to stand it down, if the whole issue can be dealt with under subsection l(2), if you want to take a minute to refer to l(2).

Ms. Gigantes: Yes, I believe you, but why should I not ask that it be stood down until we see what you are going to do?

Mr. Ward: Okay. I just thought those sections could be dealt with without this issue in there.

Ms. Gigantes: It will help us to remember that we have to come back.

Mr. Ward: All right. I was just trying to do it from the point of view of (inaudible) to the government.

Ms. Gigantes: We will withdraw subsection 14(1) in that case. Assuming that there is a satisfactory amendment brought forward by the government to subsection 1(2), fine; if not, we will prepare one of our own.

Mr. Chairman: All right.

Mr. Pierce: Are you standing down the NDP amendment?

- Mr. Ward: No. I am just talking in terms of the convenience.
- Ms. Gigantes: They want to close off the section.
- Mr. Ward: If you look at subsection 1(2), it says what "posting" means, and if we are changing the definition of "posting," I do not see why we need all these other amendments throughout the bill.
- Mr. Chairman: Then we can vote on subsection 14(1). All those in favour of subsection 14(1), as amended. Carried.
  - Mr. Chairman: On subsection 14(2), Ms. Gigantes.
- Ms. Gigantes: I think this is an amendment very much of the same nature as has been defeated before. I do not think there is any point putting the committee through another vote on it. That is the full information, quite apart from the plan. We will withdraw it.
- Mr. Chairman: All right. That being withdrawn, shall subsection 14(2) carry? Carried.

There are no amendments to subsection 14(3). Shall that subsection carry? Carried.

There is a government amendment to subsection 14(4).

- Ms. Gigantes: If you do not mind, I would like to raise the question of the time allowed to file a complaint under subsection 14(3). Here we are talking about unorganized workers. If they do manage to get their hands on a copy of a pay equity plan, which is supposed to provide then with pay equity, what we are doing is giving them three months to file. Actually, I believe I should be raising this under subsection 4. I will raise that point when we get to it.
- Mr. Chairman: I am allowing your question on it, but we have already passed subsection 3. I am going to subsection 14(4).
- Ms. Caplan moves that subsection 14(4) of the bill be amended by striking out "mandatory posting date" in the third line and inserting in lieu thereof "the day the plan is posted in the work place."

Do you have a question on this one, Ms. Gigantes?

### 1510

Ms. Gigantes: We do not like the change from "mandatory posting date," but we have expressed that before.

My question relates to the time limit unorganized employees have to make a complaint about the plan. The employer has anywhere from three years to six years; three years to four years in the private sector. A public sector employer would have up to two years to develop a plan. We are giving unorganized employees 90 days to file an objection, to submit comments on a plan to the employer. If the employee who may have objection to the plan does not make comments to the employer, can the employee go ahead without having notified the employer of the problem and file a complaint with the commission?

Mr. Charlton: Ninety days.

Ms. Gigantes: It is only three months. We have not yet worked out a method whereby these unorganized employees would get their hands on a copy of the plan and we are asking them to submit comments to the employer by the 90th day. Under subsection 14(7), which we are not discussing now, the employees would have to file a notice of objection with the commission within 30 days,.

We have really put restrictions on people who are not in a strong position, to get their hands on the information, analyse the information—they do not have bargaining agents who can help them do that, who have been through a process of negotiation—and then decide whether they are going to file a notice of complaint and perhaps whether they are going to want to be represented by a third party because they live in such a fearful position in their work place. If we are going to be real about the situation of unorganized workers, we have to extend those times of objection and notice of complaint.

Mr. Ward: I understand what you are saying, but it seems to me that what you are urging is an even more stretched-out time line.

Ms. Gigantes: No.

Mr. Ward: I am trying to talk about the impact. You have a posted plan. The employees have 90 days to submit comments to the employer. It anticipates a to-and-fro. I forget. but I think the employer has 14 days or whatever to respond to those comments and then there is another 30-day period. If you are saying that those time lines are unrealistic, I suppose the alternative is perhaps six months or whatever to review the plan and for the to-and-fro. It would seem to me that if there is concurrence on the part of the employees and the employers, the impact is to delay the process.

 $\underline{\text{Ms. Gigantes:}}$  No, the plan would be deemed to be approved if no objections were filed and it would go ahead.

Mr. Ward: It would be deemed to be approved if no objections were filed, only rather than after 90 days, then after six months maybe.

Ms. Gigantes: That is correct. I would suggest--

Mr. Ward: I am saying is the impact is--

Ms. Gigantes: There would be no delay in the payments. There would be no particular inconvenience. What you could count on then, I think, is a better appreciation by employees of what the pay equity plan was.

 $\underline{\text{Mr. Ward:}}$  You do not think that is realistic within three months after posting?

Ms. Gigantes: No, I do not, not when we have not even delivered them a copy of the information on which a plan is based and we have not provided them a copy yet--we may, by amendment--of their plan.

Furthermore, can I ask you, in connection with subsection 14(4), to look also at subsection 14(7), because it seems to me 14(4) and 14(7) are in some ways alternatives. Tell me if I am reading it wrong. Subsection 14(7) says: "Any employee or group of employees to whom a pay equity plan applies, within 30 days following a posting in respect of the plan under subsection (6), may

file a notice of objection with the commission whether or not the employee or group of employees has submitted comments to the employer under subsection (4)."

Tell me whether I am right: I am an employee working in an unorganized place of employment. My employer posts the plan. I may be able to get my hands on a copy. If I am going to make a complaint to the Pay Equity Commission, I have to let it know within 30 days.

 $\underline{\text{Mr. Ward:}}$  No, that says "in respect of the plan under subsection (6)," which means it has already gone through the 90 days.

Ms. Gigantes: The separate order plan. That is helpful. Thank you. I would still like you to consider extending the time under subsection 4. In an unorganized work place, that is a really tight time constraint. I am assuming from other sections of the bill that, once posted, the plan will be considered to be in effect until the commission has made a decision that it is not and it has to be amended.

Mr. Pierce: Just as a point of clarification, if that period is extended to six months, does that not delay the period of implementation?

Ms. Gigantes: No, it does not, because the plan would be deemed to be operative. What section was that?

Mr. Pierce: Providing there are no complaints. If the period for complaints is six months, then the plan cannot be deemed to be in place or implemented until that period of time has elapsed.

Mr. Charlton: That is why the mandatory posting date of one year was so important.

Mr. Pierce: You can go back on the clause if you want, but we are talking about this particular clause. I have some sympathy with the message that three months is a very short time, given the fact that employers and employees have a month's vacation. You can get caught up in this thing to the point where you really do not get three months after the thing is posted; you may have only a couple of weeks. If you extend that posting time for complaints, does it affect the implementation date?

Mr. Ward: It does not affect the payouts because the payouts are retroactive to the wage adjustment date, regardless.

My concern is that during the course of the public hearings, I believe the only comments I recall on this whole process actually came in relation to the 14 days to respond to employee complaints. I do not recall, and you can correct me if I am wrong, hearing from any employee groups. As a matter of fact, one employee group felt the 90 days was too long and that it was stretching it out. The impact on the bill of making it 120 days or whatever is not great, but it is just that I disagree. I did not sense that was a concern on the part of employee groups.

Mr. Pierce: Was that from employees who were represented by unions?

Mr. Ward: In effect, you have four months under the bill. I do not recall the deputant, and correct me if I am wrong, who had a difficulty with it.

- Mr. Charlton: What unorganized people were here?
- Mr. Pierce: That is the question I asked. The presentation groups you had were bargaining units representing employees.
- Ms. Gigantes: The union of unorganized workers did not make a presentation.
- Mr. Ward: All I am saying is that I do not recall that being identified as a concern by any of the groups.
- Ms. Gigantes: We are raising it as a concern. We have consulted with a fair number of people in the course of our amending process.
- Mr. Ward: Was there not some concern expressed during the course of the hearings that the 90 days was too long?
- Ms. Gigantes: Not to my recollection. You might remember things that I do not.
- Mr. Ward: I really thought there was, that three months was an inordinate amount of time.
- $\underline{\text{Ms. Gigantes:}}$  Not to my recollection. I am sure employers would think so.
- Mr. Ward: The employer complaints that came in the hearings were they had only 14 days to respond. In effect, there are four months under this whole process.
  - Ms. Gigantes: It can go first to your employer.
- Mr. Ward: You go the three months for the employee to comment on a posted plan. The employer has 14 days to respond to those complaints. Then having gone the 90 days and 14 days--104 days--the employee has another 30 days in which to file an objection. We are up to 134 days.
- Ms. Gigantes: The process we are talking about here is an unorganized establishment. We are talking about women in an unorganized establishment. We are talking about women who may be part-time workers in an unorganized establishment. We are saying the employer puts up a plan. The women do not have the wage rates, the pay schedules, the job descriptions. We have not yet guaranteed that they can get their hands on a copy of the plan to take home and talk about to a neighbour, a friend, a relative or an expert.
- Mr. Pierce: On a point of order, Mr. Chairman: there is no amendment being proposed to this section. Are we just discussing the section or is there an amendment forthcoming for the section? As I said earlier, we could be sympathetic if there is an amendment, but there is nothing to address.

## 1520

- Ms. Gigantes: I move that subsection 14(4) in the third line be changed from "90th day" to "180th day."
- Mr. Chairman: We have an amendment on the floor that has to be considered. That would have to be an amendment to an amendment. You would be

amending the main body of the subsection, as printed. We can dispose of 14(4) and then amend it further, if you like.

Ms. Gigantes: Good.

Mr. Chairman: Do you want to vote on subsection 14(4) then, which is the amendment, to keep it clear?

Mr. Pierce: I thought we had voted on subsection 14(4).

Mr. Chairman: No.

In favour? Opposed?

Motion agreed to.

Mr. Chairman: Ms. Gigantes moves that subsection 14(4) be amended to delete "90th" in the third line and replace it with "180th."

Ms. Gigantes: If I could continue speaking to the motion I had not moved, in the unorganized work place the plan is posted by the employer. As the employee, I would have three months to go tell my employer, without benefit of a union, that I objected to his or her plan. It is not an easy thing to do to go to your employer and say, "I do not have a union but let me tell you what I think of your pay equity plan."

Interjection: And where you can stick it.

Mr. Pierce: What is so hard about that?

Ms. Gigantes: I know that is going to be very welcome. Then, if I have complained, and I have protection against harassment under this legislation, the review officer can come in and have a look. No, the review officer does not even enter. The employer has time to change the plan. Under subsection 7, if I do not like the new plan, I have a month to inform the commission that I have an objection. I would prefer, as an employee in that situation, to have six months to find some agent outside the work place, some local women's group, some local lawyers' group, that could give me advice about how I can file the complaint, hopefully in some kind of anonymous form—we have amendments to that effect—and have a third party represent me at a hearing so that I do not have to deal directly, without protection of a union, with the employer over this matter.

Ms. Caplan: I would like to address the amendment that has been placed by the NDP and give you my understanding of what will happen if that date is extended.

First, while it will not delay the implementation date, it will delay getting money into the hands of employees simply because of the extension of the time for complaint that must be waited to see if there is a complaint. There will be a delay of money going into hands.

Second, retroactivity will likely be imposed in most cases, because of this amendment, on the part of the employer. Because of the time lines involved and the chances of having the whole complaint process completed, I think there will be more of a retroactivity involved than there would be and

there is still a possibility of having that under three months--but by extending it to six months.

Third, given the time lines we have and the establishment of the Pay Equity Commission, which is there to give information to any employer or individual, whether organized or unorganized, on the process and the rights under the act, I am not at all sure that that any person prior to the posting or after the posting could not seek that advice on how to proceed within a three-month period. I am not sure that if someone is concerned about making an inquiry or a complaint about a plan, she is going to feel any more comfortable after waiting six months to do it than after three months.

My concern is very different from Ms. Gigantes's. I see this as delay of the process in getting money into the hands of people who are waiting for redress. Since we did not hear one complaint from anyone suggesting that three months was too short, I prefer instead to see the bill enacted with the three months and then if that is a problem, we can correct it afterwards. I would hate to see us delay this process any further.

I do not think that what is being proposed will be of benefit to the individual employee and will really just result in delay. I think it is well-intentioned and I understand it but I think it is a misguided amendment.

Mr. Chairman: Ms. Caplan, may I ask a question that may or may not be helpful to the parliamentary assistant? What would be so wrong with having up to the 180 days just as a safeguard. The initiative is going to be taken by the employee in any event and if the NDP is correct in saying that 90 days is too short, and if Ms. Caplan is correct in saying that it may be a delay, the onus is on the employees to take the initiative in any event and they are delaying their own right to justice under this act.

Mr. Ward: The whole point is that it is not deemed to be approved until those time lines have elapsed. In terms of the impact on the bill of the legislation and the financial obligation, I am not arguing that there is one. What I am saying is that I do not believe that this is really in the best interests of the workers who are being covered by this. The only comment on this clause that came up during the course of the public hearings was somebody saying that the 90 days was too long a period.

Ms. Caplan: The 14 days.

Mr. Ward: Also, on the part of the employers; I am not worried about that.

Mr. Charlton: The time lines in this bill are not fixed. The 30 days is the only fixed time line. You have up until the 90th day. If the employees respond with their comments on the 10th day, the employer has 14 days to respond from the 10th day, not from the 90th day. When the employees make their comment, that starts the process.

Mr. Ward: It is seven days after the end of the review period.

Mr. Charlton: Yes, and the review period is seven days.

Ms. Caplan: No, it is three months; 90 days.

Mr. Ward: "Not later than seven days after the end of the review period," the review period being 90 days. Look, I really think it is a matter

that should just be voted, plain and simple. I just do not think you are doing--

Mr. Charlton: All right, so we change subsection 14(6) to say "after the comments are received."

Mr. Ward: Then you cut it off.

Ms. Caplan: You have to wait for the 90th day to see if there are any comments, from everybody.

Mr. Ward: You know you are arguing both sides of the same issue.

 $\underline{\text{Mr. Charlton:}}$  If you receive the comments on the 10th day, you know there are comments.

Ms. Caplan: For each and every person, you have to wait out the 90-day period before your plan is deemed not to have any comments. If you add to that another three months, you are just delaying the period you must wait before a plan can be deemed. I have said everything I have to say.

Interjections.

Mr. Chairman: I was speaking with you only because we could not pick you up on the microphone.

Ms. Caplan: I understand. I just do not want to be rude and talk to them with my back to them. I apologize; I am in some difficulty with Hansard.

Mr. Chairman: You can watch on the reruns. You can speak to the microphone and if I see anyone making any faces at you while your back is turned I will advise you and then you can turn around and belt them.

Ms. Gigantes: I do not understand this notion of retroactivity or delay of payments. If the employer posts a plan, he knows-let us say it is a "he"--what his view of his obligations is to make equal pay adjustments. He knows the minimum, we could say. He knows his bottom line or maybe his starting line. Right? It is his first statement of what he thinks he ought to pay. True?

Now, wait for it: The employers take a look at it. They somehow get their hands—maybe we will help the employees get their hands on a copy of the plan. They look at it and they say: "This is gobbledegook. This does not make any sense to us." They take it home and worry about it. They call a friend. They call the commission. The commission says: "We do not have the plan on file yet. It will come to us. If you make a complaint, we will have to take a look at it. Why do you not ask a local lawyer? Why do you not talk to a local women's group? We know they have been active on this question with another establishment nearby."

It takes time to set these things up. Presumably you are trying to get a group of people together to work out what they think may be the problems and discuss it with outside people who can give them some assistance on it, and you are talking about their being able to do this all in three months, all finished. They cannot complain about the problem.

Mr. Ward: I really do not see much point in debating it.

Ms. Gigantes: The employer can make his equal pay adjustments; nothing is stopping him.

Mr. Ward: You have already made the argument.

Ms. Caplan: He cannot make the adjustments.

Ms. Gigantes: Of course he can make the adjustments.

Mr. Ward: You do not understand that you are delaying the payouts by your amendment.

Ms. Gigantes: What is there in this legislation that says he cannot go ahead and make equal pay adjustments?

Ms. Caplan: Because the plan is not deemed to be a plan until after the appeal period. That is the reason no one would make the adjustment until the process is complete. Come on, Evelyn.

Ms. Gigantes: If he knows what the minimum is in his view, if he does not pay it, it is his problem if it is retroactive.

Ms. Caplan: No, it is the employees' problem.

Mr. Ward: When do they see their payments?

Ms. Caplan: When do they see their payments?

Mr. Polsinelli: No employer in his right mind is going to make any payments, any adjustments, until he has a plan which has been approved or deemed to be approved.

Ms. Caplan: Right.

Mr. Polsinelli: It is as simple as that. That is reality, Evelyn.

Ms. Gigantes: If you balance this matter and ask unorganized employees whether they would prefer to wait three months in order to make sure they had six months to assess a plan, they would take--

Mr. Polsinelli: If you give them six months, you just delay the whole process by an additional three months. That is the bottom line. They will not see their adjustments for an additional three months. That is the bottom line in what you are saying.

Ms. Gigantes: What we could do to counteract that then is to set up the payout date three months earlier than it is now written in the bill, if you are so concerned about that. Let us have them have six months to make a complaint.

Mr. Chairman: I think we have had adequate debate on subsection 14(4). The amendment is to extend the time period in the third line from the 90th day to the 180th day.

If I have your attention, members of the committee, I will call for the amendment.

In favour of Ms. Gigantes's amendment?

Opposed?

Motion negatived.

Mr. Chairman: Shall subsection 14(4) carry as printed?

Interjection.

Mr. Chairman: It was not amended.

Ms. Caplan: It was amended.

Mr. Chairman: Oh sorry, Ms. Caplan did amend it. Shall subsection 14(4), as amended, carry? Carried.

I had a request for a break before we get to subsection 14(5), so why do we not do that for 10 minutes or so?

The committee recessed at 3:33 p.m.

# 1557

Mr. Chairman: Members of the committee, I recognize a quorum, so I believe we can get started again. We are at subsection 14(5) on page 28 of the bill. The only direction I have on that one is that Ms. Gigantes and the New Democratic Party have indicated they want to vote against subsections 3, 4, 5 and 6, so you may have some comments on subsection 5, Ms. Gigantes. If you do not, I will call the vote on subsection 5.

Ms. Gigantes: I do not.

Mr. Chairman: All right. Then all in favour of subsection 14(5), as printed, please indicate. Opposed? Carried.

All in favour of subsection 14(6), please indicate. Opposed? Carried.

We have an amendment to subsection 14(7) from the third party.

Ms. Gigantes: I am going to change the amendment that is before us because of the previous discussion, so give me a moment to reorder.

Mr. Chairman: All right. I have one piece of housekeeping while you are looking up yours. I presume the Progressive Conservative motion on subsection 14(7) has been withdrawn. It is a technical amendment with respect to the words "commission" and "director" again. So that is out. Whenever you are ready. Take your time, I am not trying to rush you.

Ms. Gigantes moves that a new subsection 14(7a) be inserted in the bill which would read:

"(7a) The commission may keep confidential the identity of an employee or a group of employees filing an objection under subsection 7 if the employee or employees so request."

Could I ask for some clarification on the first part of your amendment? Have you withdrawn that?

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Ms. Gigantes: Yes, I have.

Mr. Chairman: So everything is withdrawn down to subsection 7a?

Ms. Gigantes: That is correct.

Mr. Chairman: We can disregard subsection 14(7) and we are dealing now with the addition of subsection 7a. All right. If you have any further comment, we can take that.

Ms. Gigantes: I think the intent of the motion is fairly obvious. We are dealing with an unorganized work place. It may be that the employee or employees do not in fact wish to discuss the matter with the employer, as under section 14(4), within the 90 days from the posting of the plan. They may wish instead to make a complaint to the commission, and I believe we are assured they could do that. We are suggesting in this amendment that such a complaint may be held confidential by the commission for an employee or group of employees in an unorganized work place.

Mr. Ward: Under subsection 32(4), I believe, we have covered that off, "Where an employee or group of employees advises"--

Ms. Gigantes: Is that an amendment?

Mr. Ward: No. subsection 32(4).

Ms. Gigantes: That has to do with a hearing; it does not have to do with the filing of the complaint.

Mr. Ward: No. It says "to the proceeding before the commission or review officer." We believe it covers off everything.

Ms. Gigantes: Subsection 32(4)?

Mr. Ward: Yes.

Ms. Caplan: Read the whole thing.

Mr. Ward: "Where an employee or group of employees advises the commission in writing that the employee or group of employees wishes to remain anonymous, the agent of the employee or group of employees shall be the party to the proceeding before the commission or review officer and not the employee or group of employees."

Ms. Gigantes: This means that in the filing of the complaint the complaint could be filed by a third party? That is your understanding?

Mr. Ward: Yes.

Ms. Marlatt: As long as there is an individual there signing off and giving the third party the right to do that.

Mr. Ward: And that can remain anonymous.

Ms. Gigantes: Okay, that is fine. Thank you very much. I withdraw the amendment.

Mr. Chairman: All right then. Can we vote on subsection 14(7)? All in favour of subsection 14(7)? Opposed? Carried.

Mr. Chairman: Subsection 14(8). Ms. Gigantes?

Ms. Gigantes: I think we will have to withdraw this one.

Mr. Chairman: Okay. All in favour of subsection 14(8) as printed? Carried.

Section 14, as amended, agreed to.

Mr. Chairman: That is another completed section. Congratulations, members of the committee. We shall now move to section 15.

On section 15:

Interjection: Moving right along.

Mr. Chairman: Moving right along, yes.

Ms. Gigantes: We withdraw subsection 15(2).

Ms. Caplan: How about subsection 15(1)?

Ms. Gigantes: Subsection 15(1).

Ms. Caplan: You withdraw subsection 15(1)?

Ms. Gigantes: Hang on. Under subsection 15(1), how long can the review officer take, first, to decide that a matter cannot be settled under subsection 15(1), and how long can a review officer take--and it is a related question in my mind--under subsection 15(2) to issue an order?

Mr. Ward: We have not put in time limits in that regard.

Ms. Gigantes: So it could take months and months?

Mr. Ward: Hypothetically, it could take a fair bit of time.

Ms. Gigantes: Would it not be wise for us to suggest a time limit here?

Mr. Ward: It may be difficult as well, in the absence of any experience. Just hold on a second.

Mr. Polsinelli: I have a question about subsection 15(2) when we get to that.

Mr. Ward: I guess the difficulty is in determining time lines as the bill takes force. With the number of plans that will have to be dealt with in a short period of time and the volume of work load, it was not felt appropriate at this time to put in those time lines, in the absence of any

firm information in terms of how long it would take. I suppose there is a possibility that you may want to look at—and it is not in the bill now—whether we should consider the power to make regulations in that regard, but we are still going to have that same problem that at the outset, there is really no indication of how long it will take or what sort of backlog will exist when the plans start to roll on stream. In the long term, it should not be a problem. In the short term, it could be a major problem.

Ms. Gigantes: Can I just point out that this comes out of the mouth of the same person who just told us that we could not delay for three months to allow unorganized employees to take another period of time so that they could review the accuracy of the plan.

Mr. Ward: I think you are misquoting me, quite frankly. I did not say that you could not take more time. I just did not think it would be in the best interests of those employees to do it. That is where we differ--not that it could not be done.

Ms. Gigantes: If it is in the best interests of the employees to resolve these matters as early as possible--and of course it is--there are other ways of dealing with the time of payouts.

Mr. Ward: That was not your argument a while ago.

Ms. Gigantes: Of course it is. We could have adjusted either the mandatory date or the time of payout to deal with the question of when the payouts started occuring and whether they occurred at an appropriate time under this legislation, but it is certainly appropriate. It seems to me that we should be able to ensure to employees that a review officer is not going to take six months to decide whether the matter can be settled and not going to take another two months to get around to issuing an order. It has been known in Ontario government administration for such matters to take an inordinately long time to get cleared up, both under the Labour Relations Act and under the Employment Standards Act.

Mr. Ward: I recognize what your concern is, and all I am saying to you is that it is impossible to make a judgement in terms of the administrative work load that would be involved at the outset and the complexity of the exercise in the absence of any experience with it.

Maybe we are talking about different issues.

Ms. Gigantes: Do you think that by the time we get this bill to the Legislature, you might be able to provide some notion of what the time lines might be under this section?

Mr. Ward: I do not think we can until we have the benefit of some experience. As Ms. Herman points out, we do not know how many plans will be objected to. We just do not have the benefit of that sort of data. I am not saying that it cannot be done or addressed down the road, or that it should or should not be, but I do not think at the outset it is going to be feasible. It is just not workable.

Ms. Gigantes: What it would suggest in the administration of this legislation is that when you run into a situation where you are finding that you do not have sufficient review officers or sufficient access to the commission--

- Mr. Ward: I understand all that.
- Ms. Gigantes: --you are going to have change the nature of the administration.
- $\underline{\text{Mr. Ward}}$ : That is right. I understand all that, and I guess that is what I am saying. You do not put in place--well, maybe you do not--

How do you put in place the amount of manpower--probably the wrong word--or the amount of personnel necessary to deal with this exercise in the absence of knowing how large an exercise it is?

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- Ms. Gigantes: That is what you play by ear. If you have a time frame that you want to reach, it is called planning. You say, "Questions like this we ought to get settled within 90 days." That was the suggestion of the Equal Pay Coalition.
- Mr. Ward: Again, I do not know what is an appropriate time line or how you put it in there in the absence of knowing the administrative-
- Ms. Gigantes: Perhaps you can make a suggestion to us about what we can do if we find three years down the road that this whole process runs into a year and a half review.
- Mr. Ward: I suppose what you could do is you may wish to consider whether or not to write in the bill the power to make regulations to establish those guidelines. That is about all I can offer at this point. It is not in the bill now and I am telling you that I see some merit in your suggestion and perhaps a way to deal with it is the regulatory process rather than the legislative one, in the absence of that information. I am trying to offer a suggestion to meet your concerns--
  - Ms. Gigantes: I understand.
- Mr. Ward: --because I do not think there is an appropriate legislative one at this point.
- Ms. Gigantes: There is if we want to make it. What you are saying is you are not prepared to do that. You are worried about the implications of that.
- Mr. Ward: I am saying make a suggestion. What I am offering is to say maybe we should look at putting in a reference to make the power to deal with it through regulation and that is not in the bill either. I would concede that may be a shortcoming that might come--
- Ms. Gigantes: It would be just as easy for you to introduce an amendment to the Legislature as to make a regulation--
- Mr. Ward: But we are not going to know. Assuming that this bill can be reported in this session, I do not see that we are going to be in a better position to deal with this.
  - Ms. Gigantes: I have finished my discussion of this subject.

Mr. Chairman: Any other comments?

Mr. Barlow: Is this just on subsection 15(1)?

Mr. Chairman: Yes. I assume you are not moving your--or are you?

Ms. Gigantes: No.

Mr. Chairman: Then you are withdrawing your subsection 15(1)?

Ms. Gigantes: That is correct.

Mr. Chairman: All right. Mr. Polsinelli has a question on subsection 15(2), but I will not move to that until we have disposed of subsection 15(1) and voted on it. Mr. Barlow, do you have anything on subsection 15(1)?

Mr. Barlow: Not on subsection 15(1), no. It is also on subsection 15(2).

Mr. Chairman: Then we have completed subsection 15(1). All those in favour of 15(1)? Opposed? Carried.

On subsection 15(2).

Mr. Polsinelli: Mr. Chairman, I am a little bit concerned about the wording of this section given the discussion that we had the other day. Given the existing wording of subsection 15(2), I am a little bit unclear how an employee would get an objection to a plan that has been prepared before the commission, considering also that we are contemplating an amendment to clause 24(1)(a), which would read that—let me see if I can sort of outline the process and see if my problem is perhaps misunderstood on my part.

If an employee complains to a plan that has been prepared under section 14 or within part II but under section 14, he has the right to file an objection under subsection 14(7) and that would be a notice of objection as referred to in clause 15(1)(b), that the commission would receive a notice of objection of the plan. Subsection 15(2) then says that a review officer goes out and tries to effect a settlement. If he does not effect a settlement, then subsection 15(2) says that he shall issue an order.

Now to that point the legislation has been complied with. Once the review officer issues the order, how would it then get before the commission if the employee wanted a hearing?

Ms. Herman: Where it is ordered, the plan is then posted under subsection 15(3) and then under subsection 15(4) where it has been posted, objections can then be filed with the commission within the 30 days.

Mr. Polsinelli: That is right.

Ms. Herman: Subsection 16(1) says, "If the commission receives a notice of objection under subsection 15(4), the commission shall hold a hearing" and shall settle the plan. So as soon as an objection is filed under subsection 15(4), the commission is then required to hold a hearing under 16(1).

Mr. Polsinelli: And subsection 16(1) also says "shall settle the pay equity plan to which the objection relates." What is the purpose of subsection

15(2) where the review officer is mandated to issue an order?

Ms. Herman: That is to get a plan.

Mr. Ward: If I can try, if I have been unable to settle upon a plan, a review officer comes in, issues an order that results in the posting of the plan. Then under subsection 15(4), if there are still outstanding objections, they go to the commission, they get a hearing by either side. The effect of the order is to establish a plan that is posted and either party can object to it under subsection 15(4).

Mr. Polsinelli: Can you go through the process with me step-by-step and clause-by-clause so that I will understand it.

Mr. Ward: I will try. The employer and the employees have been unable to arrive upon a plan.

Mr. Polsinelli: This is in the unorganized sector. We are dealing with section 14. The employer prepares a plan, we go to subsection 14(4), the employees have 90 days to object. If there is an objection the employer may change the plan under subsection 14(5).

Mr. Ward: Yes.

Mr. Polsinelli: We go to subsection 14(6) and the employer has to post an amended plan. Under 14(7) an employee has 30 days to review the amended plan or file an objection.

If the employee files an objection we then go down to clause 15(1)(b) which says, "If the commission receives a notice of objection, a review officer shall investigate and endeavour to effect a settlement."

Mr. Ward: Right.

Mr. Polsinelli: Subsection 15(2) says if the review officer cannot effect a settlement, he has to issue an order. Now at that point, what clause allows the employee to go before the commission? What gives him the right to request that the commission hold a hearing? We have already gone through sections 14 and 15.

Mr. Ward: It is paragraph 15(4)3, "Where a pay equity plan has been posted under subsection (3), objections with respect to the plan may be filed with the commission within 30 days of the posting as follows:

"3. If the plan does not relate to a bargaining unit and a review officer made an order under subsection (2), the employer or any employee or group of employees to whom the plan applies may file an objection." That is on the following page.

Part of the problem may have been that the way the bill is laid out, a lot of people, I believe, have missed those three paragraphs. I think the first time we discussed this, that was overlooked.

Mr. Polsinelli: That answers my questions. Thank you.

Mr. Barlow: That answers my question too.

Ms. Caplan: It is all there.

Mr. Barlow: It did not make sense at first blush.

Mr. Ward: It is too bad we missed that for three weeks. We could have sorted that out.

Mr. Chairman: Ms. Gigantes, what do you wish to do with your amendments on subsection 15(2).

Ms. Gigantes: Withdraw.

Mr. Chairman: Subsection 15(1) is disposed of. Subsection 15(2), if they are all withdrawn, then I will ask for the committee's concurrence on subsection 15(2). All those in favour? Carried.

Subsection 15(3).

Ms. Gigantes: In subsection 15(3) we are dealing with an establishment where there is a bargaining agent, a plan has been posted and a group of employees or the bargaining agent can make a complaint that the bill says has to be within 30 days. We think that should be three months.

We do not intend to argue this one any further because we went through the same kind of argument in connection with the unorganized work place, but we think that is too short.

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Ms. Caplan: The only comment I would make on this one--and I think this is an important difference between the organized and the unorganized, in the unorganized there is 90 days for the complaint and then the review. This one concerns where there is a bargaining agent acting on behalf of the employees. Even after that process, the 30 days is permitted for a complaint by an individual employee, who would have the ability during that 30 days to go to the bargaining agent for explanation or to the commission with information or an inquiry.

It is my feeling that to add an additional three months to a process where there has been a bargaining agent is unnecessary and creates undue delay. The reason that 90 days was selected for the unorganized was that they did not have the bargaining agent acting on their behalf. I would hesitate to add anything that would delay this any further.

Ms. Gigantes: This bill is an example of how we are all rushing to equalize pay for women and, obviously, the addition of an extra two months is an outrage. I think that is silly.

What we have assumed and what we are assuming here is that sweetness and light prevails in the work place and that bargaining agents always act in the best interests of each member. Under this legislation, these pay equity plans are not being ratified by the membership. Employees need a chance to take a look at them. There are lots of situations, and everyone knows it, where the interests of female workers represented by a bargaining agent may not be coincident with those of male workers.

We have set up every kind of incentive for employers to find ways of avoiding payouts, in my view, and we are not setting up enough protection for female employees, either in the organized work place or in the unorganized work place, in terms of their ability to assess a plan, decide that it may not be adequate and pursue a complaint.

Mr. Ward: Can we just get a clarification from Ms. Marlatt or Ms. Herman on part of this point because I think something has been missed.

Ms. Herman: In paragraph 1 of subsection 15(4), where a plan relates to a bargaining unit, objections can be made only by the employer or the bargaining agent.

Mr. Ward: An employee can still go and make--

Ms. Herman: The employee could complain that the bargaining agent or the employer were not doing their job under subsection 6(1) or subsection 6(2) but could not complain against the plan.

Ms. Gigantes: That is a wonderful setup. Not only do you have to fight your employer but there may also be situations where you have to go and take an action against your union.

It is possible to set up this legislation so that there is time for people to work things out properly, including having a mandatory posting date which falls one year before the payout date, which you have gotten rid of by your amendments, and to allow a little bit extra time for unorganized employees and a little bit extra time for organized employees to make sure that they can exercise rights under this legislation. This is nuts.

You do not like the pay equity plan. It has not been ratified by the membership. Then you have to go and take an action against your union under subsection 6(1). Give me a break.

Ms. Caplan: Shall we vote?

Mr. Chairman: As soon as you are ready. Is there any further comment? Is it your intention to move an amendment on subsection 15(3)?

 $\underline{\text{Ms. Gigantes}}$ : I am trying to decide. I have given up, Mr. Chairman. I am putting on the record how we feel about these things, but there is no use asking for votes because nobody is interested.

Mr. Pierce: I think it should be noted, in fairness, that the preamble to all collective agreements is that the union is the sole negotiating force for all its employees and all its members.

Ms. Gigantes: A collective agreement and a contract are ratified by a membership.

Mr. Pierce: That is right, by the democratic process.

Ms. Gigantes: This is not. This is not a collective agreement. This is a pay equity plan designed under this legislation, and we have set it up so that it is most difficult for female employees to have the time to make sure their rights are being dealt with properly.

Mr. Chairman: In fairness, could we give Mr. Pierce an opportunity to speak?

Mr. Pierce: I will withdraw, Mr. Chairman. It is obvious that any comments would be taken less objectively than necessary, so we will just go on with the process.

Mr. Chairman: All right. I do not have an amendment on subsection 15(3), so I will call the motion on 15(3) as printed. All in favour? Carried. Subsection 15(4)?

Ms. Gigantes: Can we assume that the posting of the plan we are going to deal with in the definitional sense will apply in all work situations where there is a plan?

Mr. Ward: Let me doublecheck. I think it does. Yes.

Mr. Chairman: Are you placing your amendment?

Ms. Gigantes: We will withdraw our amendment on 15(4).

Mr. Chairman: The amendment being withdrawn, I will call the vote, unless there are any further comments. Shall subsection 15(4) carry? Carried.

Anything further on section 15? We have subsections 5 and 6 to deal with. Do you have something on 5?

Ms. Gigantes: On both 5 and 6.

Mr. Chairman: Let us take subsection 5 first then. You do not have an amendment at this time?

Ms. Gigantes: No. We had intended voting against these, and let me explain why.

We are talking in these sections about the situation where there are fewer than 100 employees and there is no pay equity plan. We have made no provision that the employer has to provide pay schedules, job descriptions or anything to employees. There is no onus on the employer to create an equal pay plan, a pay equity plan.

Section 20 says that for these employees who would not become eligible to lay a complaint, based on no information and no plan, until years 5 and 6 after this legislation passes, the wage gap can go on growing until year 5 and year 6, and we think the whole way of dealing with employees in establishments of under 100 is inadequate. There is no point in our going through detailed amendments on these sections. It is quite clear we are not going to get changes.

Mr. Chairman: All right, I will call subsection 15(5) then. All in favour of 15(5)? Opposed? Carried.

In favour of 15(6)? Agreed. Carried.

Shall section 15 carry?

Section 15 agreed to.

On section 16:

Mr. Chairman: We have two amendments to subsections 16(1) and 16(2). They are both the same. Would you like to move them together?

Ms. Caplan moves that subsection 16(1) of the bill be amended by striking out "commission" in the second line and inserting in lieu thereof "hearings tribunal."

It is identical for subsection 16(2). She moves them both.

This is a word change only, of a technical nature. Any comment or question? Shall subsections 16(1) and 16(2) carry? Carried, as amended.

Subsection 16(3)? Carried.

Section 16, as amended, agreed to.

Sections 17 to 19, inclusive, agreed to.

On section 20:

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Ms. Gigantes: Can I just draw to members' attention that what is being discussed in the bottom paragraph of section 20 is that for women employed in firms with fewer than 100 employees, where they have to wait five and six years to be able to make a complaint, with no plan and no information until the year when their work place folds into this legislation at year 5 or year 6, the pay gap under section 20 can increase.

Mr. Chairman: All right. I will call the vote on subsections 20(1) and (2). In favour? Opposed? That is carried.

Section 20 agreed to.

On section 21:

Mr. Chairman: Enforcement, part IV, section 21: There are three parts to this section.

Ms. Gigantes: On subsection 21(1), could I ask legislative counsel whether "employee" should be read as "employee or group of employees"? Does it always have to be the single person who files the complaint, or could it be a group of employees?

Mr. Revell: Let me confer. In consulting with my colleague, we are of the opinion that it is really not necessary to use the expression "group of employees," even though the expression "group of employees" has been used from time to time in the bill.

Ms. Gigantes: You do not think somebody might mistakenly interpret this section at the commission by saying to a group of employees, "Sorry, you cannot file a complaint as a group"?

Mr. Polsinelli: Subsection 21(3)--

Mr. Ward: It is not a problem to add "group of employees," is it?

Mr. Chairman: If it makes it more understandable and more clear, why not add it, if there is any question about it whatever? I do not think it is the intent of the bill to exclude a group of employees.

Ms. Gigantes: In that case, I move that subsection 21(1) of the bill be amended in the first line by the insertion of the phrase "or group of employees" after the word "employee" and the replacement in the first line of the word "or" by a comma. I do not know if that comes out right.

Mr. Revell: May I make a suggestion? I think we know where the general idea is going with this. The phrase "or group of employees" has to be added in to subsection 21(1) in the first line, and then you would also want to do something where it says "the bargaining agent, if any, representing the employee or group of employees," for example. It has to be made consistent; and likewise in subsection 21(2).

If the motion is put that the concept of "group of employees" is to be added in to 21(1) and 21(2), then may I make a suggestion that legislative counsel have the discretion to fix it up overnight, and we will bring back the motion, if not tomorrow morning, then tomorrow afternoon, so you can see what we have done with it?

Ms. Gigantes: Heavenly.

Mr. Chairman: Were there not other parts of the bill where there were similar questions?

Ms. Gigantes: We have one amendment still in the hands of legislative counsel.

Mr. Chairman: I wonder if there would not be some merit in having legislative counsel, understanding that the committee has indicated that it wants this clarified, so it could be inserted anywhere in the bill where it is applicable, come back and advise where it has happened. I have a feeling there may be a couple of other places.

Ms. Gigantes: One follows immediately in subsection 21(2), as has been indicated.

Mr. Chairman: Yes. There may be other places as well. If not, then what I have just said is of no consequence, but if there are some other places, then they may well be--

Ms. Caplan: Agreed.

Mr. Chairman: Okay. If that is agreed, then we will have legislative counsel do a redraft to indicate that kind of coverage with respect to a group of employees.

Ms. Gigantes: In that case, we will withdraw our amendments on pages 67 and 68 to subsections 21(1) and (2).

We have a further amendment which--

Mr. Chairman: Are you still talking about section 21?

Ms. Gigantes: I am talking about section 22.

Mr. Chairman: I have not dealt with section 21 yet.

Interjection.

 $\underline{\text{Mr. Chairman:}}$  I think we can deal with section 21. Is it appropriate to deal with it now even though we are going to amend it?

Mr. Revell: We have been given this kind of discretion from time to time in the past by a committee, to deal with it.

Mr. Chairman: It is a fairly simple addition. I would think that--

Ms. Gigantes: Fine.

Mr. Chairman: Let us deal with section 21 and we will not have to come back to it. The understanding will be that if the committee is not happy with what the Legislative counsel drafts, we can reopen that clause. That being the understanding, let us go ahead.

In favour of section 21 and all its subsections?

Ms. Gigantes: The government did not move--

Mr. Barlow: You have a government amendment to subsection 21(3).

Mr. Chairman: Sorry. Let us deal with subsections 1 and 2.

Mr. Barlow: Since you did not want to accept our amendments earlier to section 26, we will deal with subsection 21(3).

 $\underline{\text{Mr. Chairman:}}$  I will call the vote on subsections 21(1) and 21(2). In favour? Carried.

Ms. Caplan moves that subsection 21(3) of the bill be amended by striking out "commission" in the first line and inserting in lieu thereof "hearings tribunal."

Is that carried?

Motion agreed to.

Section 21, as amended, agreed to.

On section 22:

Ms. Gigantes: We have an amendment tabled on page 69 of our amendment package, but before I move that, I would like to ask a question about subsection 21(1).

Under that subsection, the commission has received a complaint that there must be enforcement under the act and a review officer is told to go and investigate the complaint, which is fine, and endeavour to effect a settlement. I wonder about that. This review officer may have been around this particular messy situation, whatever it is, four or five times by the time we get to subsection 22(1). Could we not allow that the review officer might just say, "Look, I know this situation; there is no way we are going to effect a settlement here. We had better just take it to the commission."

I hate to see the situation where an employer or bargaining agent could say, "Look, he did not even try to do a settlement," when there is nothing in the legislation that allows the review officer that discretion.

Mr. Ward: What discretion is it that you are seeking?

Ms. Gigantes: We read in here, "A review officer shall investigate the complaint and endeavour to effect a settlement." I would like the discretion that he may. He may know that complaint inside out through all kinds of previous steps.

Mr. Ward: I do not see a problem with that.

Ms. Gigantes: If he wants to investigate and he wants to try to effect a settlement, fine, but if he knows perfectly well it is hopeless, why not give the discretion to the review officers to say: "Go to the commission. Let us settle this once and for all."

Mr. Ward: We do not have a problem with that because, in effect, that is what is going to happen.

Ms. Gigantes: Somebody might argue that it has not really happened, that the review officer did not try.

Mr. Chairman: Ms. Gigantes moves that subsection 22(1) of the bill be amended by inserting after "and" in the third line "may."

The indication is that there is no objection to that amendment on the part of the parliamentary assistant.

Mr. Pierce: Nor us.

Mr. Chairman: We will vote on the amendment to subsection 22(1). All those in favour of the amendment? Opposed?

Motion agreed to.

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Mr. Chairman: All those in favour of subsection 22(1), as amended? Carried.

Ms. Gigantes moves that section 22 of the bill be amended by adding thereto the following subsection:

"(la) The review officer shall notify the parties and the hearings tribunal as soon as he or she decides that a settlement cannot be effected and that he or she will not be making an order under subsection 23(3)."

Mr. Ward: We concur with the suggested amendment.

Mr. Chairman: The amendment being proposed is a new subsection. All those in favour of the amendment? Carried?

Motion agreed to.

Ms. Caplan: Maybe we should go to the draftsmen on the wording of this, because  $\overline{I}$  believe the wording in the legislation is "he or she." They will make it "the officer" or however it is going to be done.

Ms. Gigantes: It says "he or she."

Ms. Caplan: They would change the wording to "the review officer." It does not matter. It is up to--

Mr. Chairman: All right. We have dealt with subsections 1 and 1a.

Mr. Polsinelli: May I make a suggestion?

Mr. Chairman: Certainly.

Mr. Polsinelli: In terms of the amendment we just passed, subsection 22(la), would it be appropriate, particularly in this piece of legislation, rather than to refer to "he or she," to use just "she"? The Interpretation Act would still interpret it as being both, right?

Ms. Caplan: You could say, "a settlement cannot be effected and that an order will not be made under subsection 23(3)."

Mr. Chairman: You are not being facetious at all, are you?

Mr. Polsinelli: No.

Mr. Chairman: You are being very serious.

Mr. Polsinelli: I am being serious. The Interpretation Act would require us to read any piece of legislation where it says "he or she" as being he or she, male or female. But given that this is an affirmative action program trying to address gender-based discrimination, perhaps it would send a nice message to use just "she."

Ms. Caplan: Claudio, please.

Mr. Chairman: Thank you for that input, Mr. Polsinelli. I know that all the members of the committee were waiting with some degree of bated breath for all that.

We are now dealing with subsection 22(2). Any concerns about that? All those in favour? Opposed? Carried.

We have a government amendment on subsection 22(3). It is the technical amendment again. Ms. Caplan moves that subsection 22(3) of the bill be amended by striking out "commission" in the third line and inserting in lieu thereof "hearings tribunal."

Mr. Barlow: I have a question on subsection 22(3), if I may ask it at this time. It is not related to the amendment, but to this section as a whole. That is, the section refers to the complaints and a request before the hearings tribunal with respect to the decision. My question is about a time frame. It does not suggest that there would be a time frame within which it would come before the hearings tribunal.

 $\underline{\text{Mr. Ward:}}$  We just went through that discussion earlier about the difficulty of establishing those kinds of time frames at this point.

Mr. Barlow: So you would rather leave it out of there?

Interjection: It could work against it.

Mr. Chairman: All those in favour of the amendment to subsection 22(3)? Opposed?

Motion agreed to.

Mr. Chairman: Shall subsection 22(3), as amended, carry? Carried.

Shall section 22, as amended, carry?

Section 22, as amended, agreed to.

On section 23:

Ms. Gigantes: We withdraw our amendments to subsection 23(1).

Mr. Baetz: And we withdraw ours.

Mr. Ward: Does that mean we are left with ours?

Mr. Baetz: That is right.

Mr. Chairman: The Conservative amendment has also been withdrawn.

Shall subsection 23(1) carry? Carried.

Subsection 23(2)? Carried.

Subsection 23(3)? Carried.

I have an amendment on subsection 23(4).

Ms. Caplan: Since the government motion to amend various sections of part II deletes the concept of mandatory posting, we ask that we delete subsection 23(4), which says "may provide for a mandatory posting date." It is no longer relevant and, therefore, we ask that it be voted against, so it can be deleted.

Ms. Gigantes: On that subject, what we have discovered going through the bill is that the removal of the mandatory posting date, which has been the assumption of a number of minor amendments, is one that ought to be looked at again by this committee.

Under the legislation for the whole schedule of the phase-in part, which is according to the nature of the establishment, whether it is public sector or private sector, whether it is private sector over 500, between 100 and 500, between 50 and 100 or between 10 and 49, all those phase-in areas, each time under section 9 there would be a requirement in those places where plans would be created--and that is everything over 100 employees--that the pay equity plan be posted in the work place a year before the payouts begin.

When we looked at the situation of unorganized work places and how long employees had to consider the adequacy of the plans and to organize work places where employees, aside from their bargaining agents, might like also to review the plan individually, we saw that we were running into problems, because we had removed or were in the process of removing by one fell swoop in section 9 and this section the different mechanism that existed in the original bill for providing information about the plan to employees.

When we get rid of the mandatory posting date, we allow employers to go to the point where they have to make the payments before they have to post the plan. That being the case, any time we ask for an extension so that employees can review the adequacy of the plan, we get the argument from the government that we are wading into the time of the payments.

In most cases, if we still had the mandatory posting date as one year before the requirement for payouts in each of these plans, we would not run into that problem. We would have cases, under section 9 and under this section, where we would be dealing with a situation where employees could ask the Pay Equity Commission for a longer time for the mandatory posting in

situations—and there may be some; there probably will be some—where it would be helpful from both sides of the bargaining arrangement in terms of creating an equal pay plan to have more time.

That might hold true, for example, in the public service of Ontario. It might take longer than a year to get plans ready for the public service of Ontario. In such cases, under subsection 23(4), there could be a request for an extension of the mandatory posting date. That is why subsection 23(4) was there, to deal with those situations.

What we have done, in dealing with the mandatory posting date and removing it from the bill, is to make it impossible to allow employees, without infringing on their payout time, to have longer to look at plans and decide whether they are adequate.

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Mr. Ward: On reflection, I believe we will--maybe Mr. Polsinelli should move it--withdraw that amendment and leave it as "An order under subsection (1) may provide for a mandatory posting date," period, or we could give it meaning through definitions, could we not?

We have not dealt with section 9 yet, have we?

Ms. Gigantes: No.

Mr. Ward: That is the difficulty.

. Ms. Gigantes: But we have dealt with the removal of the phrase "mandatory posting date," as I recall.

Mr. Polsinelli: Perhaps legislative counsel could come up with something. My concern is that we are dealing in this particular subsection with a delinquent employer. The review officer should perhaps have an explicit right to issue an order requiring him to prepare a plan by a specified date. If he has that authority already within subsection 23(1), that is fine. If he does not, perhaps we should give it to him in the legislation.

Ms. Gigantes: Two different points are being raised here.

Mr. Ward: There are two different points. I think we have had some discussion about the other point you have raised on whether we should complete section 9 first. I think the use of "mandatory posting date" may sound convenient, but it should really say "should post a plan at a specified date." Would that do it?

Mr. Revell: I guess essentially what you would be talking about is that "mandatory posting date" really has completely disappeared except for this one use.

Ms. Gigantes: It is still in section 9.

Mr. Revell: It is still in section 9, but you may have to have a definition in section 9 that explains all the other changes. I think what you are really getting at is an order under subsection 1.

Ms. Gigantes: Just on that point, because of all the discussions we have been through today about the implications of removing "mandatory posting

date," if we decide that we want to we can simply go back to those clauses where we removed it, stick it back in and live with section 9.

Mr. Revell: I think we can fix subsection 4, if it is the desire of the committee to keep it, and cover it off without using a definition of "mandatory posting date," if that is the wish of the committee. I am receiving some instructions from Ms. Marlatt here. It is something that is going to require overnight. Rather than having some discussion, I would prefer to receive specific instructions and come back after it has been stood down to give a chance to think about it.

Ms. Gigantes: Is there any chance that the real nature of the concern being raised by the government is quite different from the concern I am raising?

Mr. Polsinelli: Ms. Gigantes, we have already had some debate on the concern you raised. We are now dealing with the enforcement section. My concern was that under subsection 23(1) a review officer would determine that an employer is not complying with part II of the act and would issue an order. I am concerned that a review officer would have the explicit authority to require the delinquent employer to prepare and post a plan within a specified period of time.

Ms. Gigantes: Am I understanding correctly that this committee is finished with the question of mandatory posting date aside from an amendment to subsection 4?

Mr. Ward: It is still in section 9.

Ms. Gigantes: Is that the feeling of the Conservative members of this committee?

Mr. Baetz: I was going to ask a further question. I certainly can sympathize with your view that if there is any appeal or anything and it starts to eat into the--

Ms. Gigantes: Payment time.

Mr. Baetz: Exactly, the pay time. That is a real concern because I imagine that exercise can be dragged out at the employee's expense over a long period of time. Maybe retroactivity or something could correct that but we are getting into a multidimensional question here. I am wondering, especially in view of the hour and in view of the fact that we have just lost the illustrious Ms. Caplan from the Liberal benches, I wonder whether you would move a motion of adjournment until tomorrow.

Mr. Ward: What I was going to do--

Mr. Chairman: I would like to have someone give some direction to the chair as to what you want to do with this subsection 23(4). We can stand it down if you would like to. I have not forgotten your comments with respect to what you want to do, but in regard to subsection 4, legislative counsel would like to have some specific direction as to where you want to go from that. I have a feeling it is multidimensional, as Mr. Baetz has mentioned. We can stand it down for an overnight review and come back here with an outline of what might meet your requirements, but I am a little concerned about the direction you may want to give the counsel at this time.

Ms. Gigantes: May I make a suggestion? If we are going to discuss all the issues that I think are related in this subsection, we could ask legislative counsel to prepare a new subsection 4a, so that they can be dealt with as separate issues. I do not want to bother doing even that unless I have an understanding from some other party on this committee that the question of a mandatory posting date is one that people are willing to reconsider. If people are willing to reconsider it, fine, but if they are not, I do not want to take up time hemming and hawing. If we want to go back and look at that question again, I will be happy to do it. I would also like to extend the time for review of plans in an unorganized work place and in an organized work place. I associate those two things. I think it is also helpful to all employees to have a mandatory posting date. Where there is good reason for an exemption, an exemption is available under the printed subsection 23(4). Are you interested in reopening this?

Mr. Baetz: Obviously, if taking another look at the mandatory-posting-date question is absolutely essential to provide some protection for the employees-the subject we were on before-then I guess we would reluctantly agree to go back to the mandatory posting date, but there may be a more simple solution. I do not know. Maybe counsel can find one for us.

Ms. Gigantes: The matter that counsel has been asked to deal with by the government is a different matter. It has to do with the powers of the review officer.

Mr. Ward: We can have a discussion when we come back.

Mr. Polsinelli: Mr. Chairman, can I ask a procedural question? Would you not require unanimous consent to reopen a clause?

Mr. Chairman: Yes.

Ms. Gigantes: Would we get unanimous consent?

Mr. Ward: What I would suggest we do is--

Mr. Charlton: That we amend the bill back the way you started it. It is your bill. You did it right in the first place.

Mr. Ward: We had that debate and I believe it was decided. If there is some interest in regurgitating the debate, I suggest perhaps we start with section 9 when we come back tomorrow, if it is the will to adjourn. I believe the issue has been decided but that has never stopped anybody on this committee from redebating an issue every time it reappears. We could quite easily move on to section 9 tomorrow when we come back.

Ms. Gigantes: There is no point in discussing section 9 unless we have an understanding that there may be consent to reopen the sections we have changed, as they are affected by section 9.

Mr. Baetz: I think Ms. Gigantes is expecting too much of us from what I understand she is saying. It is not only that we agree to reopen discussion on section 9, but it is also implying that we are then going to agree with her point of view. We may not, necessarily.

Ms. Gigantes: I am just making the point that there is no point in having the discussion unless that is the object. Could I suggest that we leave

this matter? There are other pieces of the legislation we can deal with now if we want. The government has asked for time to have a motion on subsection 23(4).

Mr. Ward: We are standing down subsection 4.

Mr. Baetz: Mr. Chairman, you did not deal with the second part of my question, my proposal a few minutes ago about adjourning.

Mr. Chairman: Yes, there is a suggestion--I do not know if it is a motion--

Mr. Baetz: I will make it a motion if you will entertain one that we adjourn.

Mr. Chairman: We can so do if you like. We are scheduled to sit until 5:30 p.m. At the moment it is five o'clock, but we have given the staff a considerable amount of work to do, as you are aware. In recognition of the fact that the clerk and legislative counsel and others will be working through a good portion of the evening, there may be some value in stopping at this point. It is the committee's decision. Do you wish to put it?

Mr. Baetz: I move adjournment, particularly in the light of your observation about the staff work load for tonight.

Mr. Chairman: The motion then is that we adjourn at this time.

Ms. Gigantes: Can I just say that we have a day and a half left and I hope we are not going to leave ourselves with unfinished business at the end of that day and a half.

Mr. Polsinelli: I would like to say that we have made a substantial amount of progress in the past two days and it seems to me all we have left are the completion of the enforcement sections, the administration of the act, the schedule and the definitions. The substance of the bill has been completed.

The committee adjourned at 5:01 p.m.

CHIN '

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

WEDNESDAY, APRIL 8, 1987

Morning Sitting

# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward. C. C. (Wentworth North L)

### Substitutions:

Barlow, W. W. (Cambridge PC) for Mr. Rowe

Davis, W. C. (Scarborough Centre PC) for Mr. Partington

Pierce, F. J. (Rainy River PC) for Mr. O'Connor

Smith, D. W. (Lambton L) for Mr. Polsinelli

Clerk: Mellor, L.

### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Legislative Counsel

MacDonald, W., Research Officer, Legislative Research Service

### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

#### LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

## Wednesday April 8, 1987

The committee met at 10:26 a.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

On section 21:

Mr. Chairman: Members of the committee, I believe we can get under way. We now have a quorum. Being distributed at the moment is the recent drafting of subsections 21(1) and 21(2), which have been reworded by legislative counsel. Once you have had an opportunity to review those documents, I would like to have a motion to put them on the floor and pass them.

What actually happened with this section was that you agreed in principle to the thrust of what was being proposed. You simply asked for a rewording that would be closer and more accurate in terms of what the committee intended. If you will take a moment to read that, we can cover off that section by voting on subsections 21(1) and 21(2). If there are any comments on it, I would be pleased to deal with those comments now.

Ms. Gigantes, are you prepared to move subsections 2l(1) and 2l(2) as now redrafted?

Ms. Gigantes: I will gladly do that, Mr. Chairman. We have decided not to go with section 9 first; is that right?

Mr. Chairman: I am just going to clear this up. The clerk wants to get the business in order and confirm our agreement.

Ms. Gigantes: This is perfect. Certainly, I will move it.

Mr. Chairman: That is moved, then. It is on the floor and it is--

Ms. Gigantes: Mr. Chairman, I have to read it.

Mr. Chairman: You have not read it?

Ms. Gigantes: I would like to read it into the record.

Mr. Chairman: You can do that or you can have it taken as read.

Ms. Gigantes: No, I would like it read in.

Mr. Chairman: Okay. Ms. Gigantes moves that subsections 21(1) and 21(2) of the bill be struck out and the following substituted therefor:

<sup>&</sup>quot;(1) Any employer"--

Ms. Gigantes: Let us take this as read. I thought we were dealing with another motion. Forgive me.

Mr. Chairman: This is rather lengthy. Again, it is dealing with complaints on the part of an employer.

Ms. Gigantes: All we have done is to add "group of employees."

Mr. Chairman: Just to refresh your memory, the key thing was whether a group of employees, as opposed to the singular "employee," could be covered. It is redrafted to reflect very precisely that an employee or group of employees—in other words, a collective group—could go forward with a complaint. That is really what these documents say that is different from what we had before us yesterday.

Mr. Baetz: I might just remind you, as my colleague Mr. Pierce has just reminded me, that unless we make some changes within this legislation, a group could be one. I do not think we are going to want to change this.

Ms. Gigantes: That is a question we raised yesterday with legislative counsel. I think it was the consensus that we wanted to spell it out explicitly. I had asked whether "employee" might legally mean a group of employees. He believes and advised us that it does, but I think we all wanted to make it explicit.

Mr. Baetz: We will get back to the whole question of groups of one, but it has nothing to do with this.

Mr. Chairman: Yes.

Mr. Baetz: It does, but this is fine as far as we are concerned.

Mr. Chairman: Does the parliamentary assistant have any comment on this?

Mr. Ward: No. Once you finish this, I have one other thing I want to put on the table.

Mr. Chairman: All right. Are you prepared to vote on subsections 21(1) and 21(2)? I am going to call the vote, because I do not see any indication of any further concern about the way it is drafted.

Motion agreed to.

Section 21, as amended, agreed to.

Mr. Chairman: The parliamentary assistant has a comment to make.

 $\underline{\text{Mr. Ward}}$ : We had quite a discussion yesterday raised by Ms. Gigantes with regard to the ability of employees to see the plan as posted. We will be moving a motion that in effect places a requirement on the employer to provide employees with copies of the plan as posted. I hope that suffices to address a major part of that. They will be circulated and dealt with under clause 1(2)(a), but we wanted to serve notice that this would be forthcoming in case we arrive at other areas in the bill that make reference to that.

Mr. Barlow: That would only cost a little bit more to the employers, would it not? It would just add a little more to the total cost.

Mr. Ward: That is true. They can use mimeographs if that is cheaper.

Mr. Barlow: Okay.

Mr. Charlton: How many languages?

Interjection: They can handwrite them if they want.

Mr. Ward: It probably will not be any more than having employees rip them off the wall where they are posted.

Ms. Gigantes: Can you advise us how many languages they will be posted in? That is not a facetious question, I suggest, because one of the reasons we were very anxious that the copies be available was that there will be many women who do not use English as their first language and who will need to take a copy and consult a translator about what it means for their work.

On section 9:

Mr. Chairman: Okay. Are you prepared to move to section 9 now? It is one of the important sections of the bill. It deals with the numbers of employees, the phase-in period and that whole matter we have left somewhat in abeyance until now. Do you have any opening remarks to make in connection with this?

Mr. Ward: Just to reiterate the discussion we had when we dealt with the whole issue of the mandatory posting date in other sections of the bill, the concern was expressed during the course of the public hearings, particularly on the part of those employers in the public sector, that given the fact that in many instances they could have quite a number of bargaining units to deal with and the speed at which they had to come on stream in terms of their pay equity plans, we should delete the mandatory posting date requirement but leave in place the wage adjustment date so there is no shift in time lines in terms of retroactivity or the amount of money that had to be made available to the employees on the basis of that plan.

It was felt that given those short time lines, particularly for public sector employees, in many instances they would have great difficulty in arriving at their plans. That was the intent of the amendment that deleted the references to the mandatory posting date.

Mr. Baetz: Could that mean this would be confined to the public sector but there would be a difference in scheduling between--

Mr. Ward: No. Our amendment in fact eliminated all references to the mandatory posting date for all employers, but I think it is fair to say that the greatest impact of the mandatory posting date is on the public sector, given that it has only two years before it has to make its adjustments.

If there is real concern over this, and obviously there has been some expressed, I think by both other parties in here, if it is felt that perhaps it is more appropriate to limit that only to the public sector, given the fact that private sector employees do not come on the first ones until three years into the process—and obviously that gives them a lot more time to work on their plans—then as a compromise, if there is some acceptance of the notion that it is a problem for the public sector employees, perhaps we could limit the elimination of the mandatory posting date just for the public sector.

Mr. Baetz: I think that would be our wish in this. I do not know how one proceeds from here on in. If that is acceptable to you, and it is to us-I do not know about the third party--

Mr. Charlton: In principle, we support what you are saying. They are the only ones that have to post at that one-year mark, so I guess we are saying they are the only ones for whom there is a time frame problem.

I am still not sure we are 100 per cent happy with the notion that by removing the mandatory posting date they could in effect be posted the day payments are supposed to start. We could perhaps talk about that and about a possible compromise, around 18 months, which would still leave six months for the employees to review the plan and for the laying of a complaint, if there is one.

Mr. Ward: Having made the suggestion at the outset that this might be a route to go, I think some of the arguments that have been made against the elimination of the mandatory posting date-bear in mind that, throughout, the government has tried to make this bill consistent; we did have an exemption and a little deviation from that consistency in terms of the shrinking of the payouts in the public sector.

Although it may be true there is a clause in the legislation that says if hardship can be shown, you can get an exemption in terms of the mandatory posting date, I think what we are trying to do is to recognize the fact that, particularly among those public sector employers, it is almost going to be automatic in many instances that they just cannot meet those time lines if they have to bargain with a large number of units.

I think it is fair to say that it is in everybody's best interests, including the employers', to have a posted plan and to have these issues resolved. We are saying, by going this compromise route, why do we not just accept that we are just going to get flooded with a myriad of requests for an extension of the time line? Why not be flexible in terms of that mandatory posting date for those public sector employers?

Ms. Gigantes: As I understand it, we removed the clause from the legislation that permitted the application for an extension of time to post. Did we not do that yesterday? We will have to determine exactly how we are going to deal with this. The government insisted on removing that clause yesterday.

Mr. Ward: We felt that was most prudent, because we really have consistently tried to make the application of this bill the same for all employers.

Regarding our subsection 23(4), which we talked about yesterday and which we have not dealt with, we will be tabling a suggestion that an order under subsection 1 may provide for a date for the posting of a pay equity plan that is later than the date provided for in section 13 or 14, to cover off those references. In terms of the private sector employers, although we have deleted references to them in the bill, I think with unanimous consent we could perhaps instruct legislative counsel to put those back in because, let us face it, private sector employers have three years anyway.

Ms. Gigantes: You are right.

Mr. Ward: That is a lot different situation from that of those public sector employers.

Ms. Gigantes: That is correct.

Mr. Ward: If we agree on this compromise, it will save us all a lot of grief and perhaps end the continual regurgitation of the debate on the issue.

Ms. Gigantes: Is the government proposing an amendment right now to section 9?

Mr. Ward: No, not right now. We have an amendment that in fact deletes section 9. What I am saying is we can stand it down on the understanding, if that is how we are going to deal with it, that we are now going to limit the elimination of a mandatory posting date just to the public sector.

Ms. Gigantes: I think Mr. Charlton and I would like to consider whether we might not ask you for an 18-month posting time frame for the public sector, but we would have to think about that.

## 1040

Mr. Ward: I suggest that we could probably return to this issue right after lunch. In all honesty, we have not come in here with any amendment. This is just a discussion that went on before we sat down at the tables today.

Ms. Gigantes: That is fine, good.

Mr. Barlow: Your amendment, of course, would be to eliminate section 9, just to cross it out.

Mr. Ward: The amendment we tabled was an elimination of section 9, but given the discussion and some of the to-and-fro that has gone on, what we were doing in terms of the elimination of the mandatory posting date was trying to respond to some of the very real concerns that were expressed, primarily by public sector employees, because they are the ones who have to come on stream the quickest.

What we are suggesting, rather than getting hung up on this argument throughout, is to limit it to those who have the problem; those who have the problem, really, are the public sector employers. We do not have amendments to do all this yet, but I am sure we can get them together.

Mr. Baetz: I was just trying to get some idea of whether you are likely to get support for the amendment, and I think we have agreed--

Mr. Ward: We have already had support, it is fair to say, to eliminate the mandatory posting date altogether.

Mr. Baetz: Yes.

Mr. Ward: What we are saying is, "Okay, we will put it back in on those private sector employers."

On section 23:

Mr. Chairman: All right. You want to stand down section 9 until after lunch and we can go back to where we were in dealing with the bill in chronological order. That would take us to subsection 23(4).

Clerk of the Committee: No. That is tied in with section 9, so we would have to go to subsection 23(5).

Mr. Chairman: Okay. The clerk advises that we have to move to subsection 23(5) rather than 23(4), which of course dealt with section 9 and the mandatory posting date. We will have to deal with that subsection after lunch as well.

We will move to subsection 23(5). We have a routine motion, again from the government, with respect to a change of name. Let us deal with the routine amendment to subsection 23(5), which is simply a change of name.

Mr. Smith moves that subsection 23(5) of the bill be amended by striking out "commission" in the third line and inserting in lieu thereof "hearings tribunal."

Motion agreed to.

Mr. Chairman: All right. We will go to Ms. Gigantes's amendment to subsection 23(5) now. Are we up to speed, everybody?

Ms. Gigantes: We do not have a subsection 23(5) amendment.

Mr. Chairman: On your page 73, it says, "A review officer may refer a question of the interpretation of this act to the commission for a decision."

 $\underline{\text{Ms. Gigantes}}$ : I believe that was one we indicated yesterday we would withdraw.

Mr. Chairman: All right. Shall subsection 23(5), as amended, carry? Carried.

Mr. Knight moves that subsection 23(6) of the bill be struck out and the following substituted therefor:

"(6) An employer or bargaining agent named in an order under this section may request a hearing before the hearings tribunal with respect to the order, and, where the order was made following a complaint but the complaint has not been settled, the complainant may also request a hearing."

Are there any comments on the proposed amendment on the part of the government? You will support that, Mr. Baetz? All right, we appear to have concurrence from all parties.

Motion agreed to.

Mr. Chairman: All those in favour of subsection 23(6) as amended? That is carried.

We have not dealt with subsection 23(4). I cannot carry section 23 because of subsection 4 and its relationship to section 9. Is that understood?

On section 24:

Mr. Chairman: We will move on to section 24. All right. We have a Progressive Conservative motion--

Mr. Baetz: The PC motion is withdrawn.

Mr. Chairman: All right. We are withdrawing all of that then.

We have a government amendment again, striking out the word "commission" and adding the words "hearings tribunal."

Mr. Knight: This is just a technical amendment.

Mr. Chairman: Mr. Knight moves that section 24 of the bill be amended by striking out "commission" where it appears and inserting in lieu thereof in each instance "hearings tribunal."

Motion agreed to.

Mr. Chairman: Subsection 24(1), Ms. Gigantes. Mandatory hearing.

Ms. Gigantes: I believe it would probably be more orderly if we set this one aside until we discuss the question of related businesses as a definitional term within the legislation. Essentially, what this amendment suggests is that there should be a commission hearing when there is a question about related businesses constituting a place of employment that should have one plan, two plans or totally distinct plans.

This is our amendment to subsection 24(1). In order to deal with it properly, we should probably discuss it in terms of the definition of related businesses. We have a concern that we would like to see addressed in this bill; that is, we do not want to see businesses that should be treated as one employer getting away with calling themselves different employers.

Mr. Ward: You were dealing with this issue under definitions. Is that correct?

Ms. Gigantes: That is correct.

Mr. Ward: Which definition? If it was the definition of employer, if you make a change to that definition, then I would think your amendment could be redundant.

Ms. Gigantes: You mean 24(1)?

Mr. Ward: Yes.

Ms. Gigantes: That is correct. I am saying we should stand it down.

Mr. Ward: I just wondered why you would not withdraw it if it would hinge on the definition of employer, because it would be covered off.

Ms. Gigantes: Because we have not dealt with the definition of employer.

Mr. Ward: Okay, forget it.

Ms. Gigantes: We may wish to amend the definition of employer.

Mr. Ward: That is what I was saying, that then you covered it.

Ms. Gigantes: No.

Mr. Ward: Oh, I see. This is your fallback position.

Ms. Gigantes: No, not at all. What we are saying is that we are putting a clause in the bill that would relate to the decision to be made by the commission on the matter. Unless the definition is changed, then the commission will never have such a matter before it.

Mr. Chairman: Let us stand it down.

Mr. Ward: Yes. I think I can see your argument for doing that.

Mr. Chairman: The clerk will make a note to stand down subsection 24(1), the New Democratic Party amendment. What about that 24(1)(a), Ms. Gigantes?

Ms. Gigantes: I believe that was the one which our discussions with the Liberals had suggested they would support. It grows out of a concern expressed both by the NDP and, initially, by Mr. Polsinelli about the follow-through on the appeal process. I am correct?

Mr. Ward: You are correct.

Ms. Gigantes: This has to do with making sure that the appeal process is one where each step is laid out and when there has not been an order made under subsection 23(3), then we want to make sure that there will be a hearing held by the commission. We want to effect a link between sections 23 and 24.

Mr. Chairman: Ms. Gigantes moves that clause 24(1)(a) of the bill be amended by adding at the end thereof "and has not made an order under subsection 23(3)."

Ms. Gigantes: I believe I have already spoken to it and I think most members of the committee are aware of it.

Mr. Ward: The government concurs with the amendment.

Motion agreed to.

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On section 24:

Mr. Chairman: I think we will have to take the subsections. We have done clause (a). Can we go to clause (b)? I will take the individual subsections of section 24. Is that acceptable? Agreed.

Agreed on clause (b)? Agreed.

Agreed on clause (c)? Agreed.

Mr. Ward: I am sorry. I missed your opening comments. Are we taking it that the hearings tribunal amendments were appropriate or are being placed in those? I am about half a step behind.

Ms. Gigantes: Yes.

Mr. Chairman: We have covered the subsections (a), (b) and (c) of section 24. I cannot carry that entire section because we have a standdown on subsection 24(1) by Ms. Gigantes, so we will have to move to subsection 24(2).

- Ms. Gigantes: We have a new amendment, Mr. Chairman.
- Mr. Chairman: All right. Do you want to move that and speak to it now, please?

Ms. Gigantes: Yes.

Mr. Chairman: I am advised that by renumbering the amendment that Ms. Gigantes has stood down to clause 24(1)(a)—in other words, separating it from subsection 24(1)—we can now carry the subsections (a), (b) and (c), which we just did in subsection 24(1).

I will ask for the concurrence of the committee. Was that amended at all?
Clerk of the Committee: Yes.

Mr. Chairman: All right. Shall subsection 24(1), as amended, carry? Carried.

Again, just make a mental note or a note on a pad that we will come back to clause 24(1)(a), which is an NDP amendment, and discuss that later.

Ms. Gigantes: The amendment I will be placing right now is unnumbered. It follows in our package, two pages past page 74.

- Mr. Chairman: Ms. Gigantes moves that subsection 24(2) of the bill be amended by adding thereto the following clause:
- "(aa) where it finds that an employer has contravened subsection 8(2) by dismissing, suspending or otherwise penalizing an employee, máy order the employer to reinstate the employee, restore the employee's compensation to the same level as before the contravention and pay the employee the amount of all compensation lost because of the contravention."
- Mr. Ward: The government's position has been that we did not feel there was a necessity for this amendment, but basically it reiterates the provisions of the bill as we perceive them and, therefore, although it may be redundant we will not object to its inclusion.
- Mr. Chairman: What does this do to subsection 8(2) that that section does not do? It may well be a reiteration, as Mr. Ward says. I find myself in the same position. I do not have strong opposition to it.
- Ms. Gigantes: We are talking here about the powers of the tribunal on an appeal of this nature, and laying out what the tribunal can do in a contravention of 8(2).
  - Mr. Chairman: It just reinforces it.
- Ms. Gigantes: No, 8(2) says what constitutes a contravention. This subsection says what the tribunal may do--
  - Mr. Chairman: If there is a contravention.
- Ms. Gigantes: --to address the contravention if it is found there has been one.
- Mr. Ward: Again, the recourse in terms of the contravention is not limited. It was our opinion that clause 24(2)(e) was broad enough and in fact

does not restrict or limit the tribunal to what it can do. It "may order a party to a proceeding to take such action or refrain from such action as in the opinion of the commission is required in the circumstances." Again we have already stated that we do not have any objection to a reiteration of specific notice.

Mr. Baetz: Especially in view of the comments just made by the parliamentary assistant that this amendment really does not in a substantial way add anything to the bill except just more lines and more clauses and more red tape, we will be opposing it. Quite frankly, the longer one sits and looks at this bill the more one has to become increasingly concerned at the complexity of it. It would take a bag of Philadelphia lawyers to understand this.

Mr. Chairman: At least a Mississauga one.

Mr. Baetz: A Mississauga lawyer, all right; whatever. Anyway, it just adds to the complexity of this whole thing, so we are going to be opposing it. As the parliamentary assistant says, it does not add anything to it, except complexity.

Ms. Gigantes: I wonder if we could ask our legal counsel, even though he is not--

Mr. Baetz: He is not from Philadelphia.

Ms. Gigantes: -- a Philadelphia lawyer, to explain what it adds.

Mr. Revell: I have never even been to Philadelphia. This is a difficult issue to deal with in terms of whether it is necessary or not. There is an argument advanced that clause (e) may cover it. There is another argument that is equally persuasive, that in other legislation where tribunals have been given the power to award compensation that power is specifically spelled out, and it could be argued that this is sometimes the sort of work the courts do, rather than administrative tribunals. This does make it abundantly clear what the powers of the commission would be in this particular area.

Mr. Chairman: All right. I have a motion by Ms. Gigantes on subsection 24(2). I will now call that motion. All in favour? Opposed? It appears that we may not have everyone voting, so I will call the motion again. Mr. Ward, let us make it clear, is a member of the committee as well as being parliamentary assistant, which is quite in order, so he may vote.

All in favour of the motion again? I see one, two, three, four, five hands. Opposed? The motion is carried. A squeaker, but none the less--

Mr. Ward: It got you off the hook.

Mr. Chairman: No, the chairman could have decided to tie the vote, and a tie vote is therefore lost. I want you to know that. I did have that opportunity had I felt strongly enough about it, but I allowed my colleagues to make their decision.

Mr. Baetz: We have a message to caucus about this.

Mr. Chairman: All right. Shall subsection 24(2) as amended carry? That is carried. The next amendment by the third party is on 24(2a)?

- Mr. Chairman: Ms. Gigantes moves that section 24 of the bill be amended by adding thereto the following subsection:
- "(2a) Where the commission finds that an employer has contravened subsection 8(1) by reducing compensation, it shall order the employer to adjust the compensation of all employees affected to the rate to which they would have been entitled but for the reduction in compensation and to pay compensation equal to the amount lost because of the reduction."

Mr. Chairman: Comments? Go ahead.

Ms. Gigantes: I believe it speaks for itself. The tribunal should be legislatively given that authority.

## 1100

- Mr. Chairman: Any further comment with respect to the proposed amendment? I will give Mr. Ward a moment to consult with staff and then I will ask him for his comments on it.
- $\underline{\text{Mr. Ward}}$ : I would just point out to the NDP that in the third line you have "shall order." I think the previous amendment was "may" and the preference is "may" as opposed to "shall" order.
- Ms. Gigantes: I wonder if the parliamentary assistant can indicate why, if the commission finds the contravention of subsection 8(1) and a reduction of compensation, which is a very basic kind of contravention of the spirit of the act, one could conclude in any case--
  - Mr. Ward: I cannot conceive of a situation where it would not happen.
- Ms. Herman: The only point was that if the intent of the amendment is only to empower the hearings tribunal to make that order, then the word "may" will give it that without binding its hands that it is required in every case. Off the top of my head, I cannot think of a case, frankly, in which it would not be appropriate. I do not know whether there would be one, but it leaves them a bit more flexibility in terms of what orders may be appropriate, while giving them the power they do not otherwise have to make those orders.
- Mr. Ward: I would point out that I think in the last clause we passed it was "may order."
- Ms. Gigantes: Can I ask whether legislative counsel, who helped us in the drafting of these, has any particular view on this word "shall" in the context of 24(2a)?
- Mr. Revell: It is a policy choice as to whether you use "may" or "shall". Of course, in reconstructing this from the earlier version, I picked up the same language. The difference is that "may" is definitely permissive and "shall" is definitely mandatory, so it is a policy choice. The way it is drafted, if you use the word "shall," it is going to mean there will be orders made.
- Ms. Gigantes: If we look back to subsection 24(2), which we just passed, where the word used is "may," it is quite clear to me why we would use "may" there, because if an employee has been dismissed in contravention of the act, the employee may have another job by the time the enforcement of this legislation takes effect and the employee may not wish to return to the place of previous employment, so we have "may."

It seems to me that when we get to clause 24(2a), none of us can think of an example where we would not want the commission, or the tribunal in this case--

Mr. Ward: I think it is fair to say the intent of your amendment is to empower the commission to do certain things, and if you look at the legislation, even in this section, the hearings tribunal shall decide the issue, but in terms of the balance of it, it is a whole process of empowering them to do certain things. That is why, in the consistency, I would say I concur that it would be very difficult to think of an instance where they would not do that, but it seems to me an unnecessary rigidity.

Ms. Gigantes: If the government wishes to amend "shall" to "may," I think we can live with that. The first time we see the commission making a wrong decision under "may," you are going to hear about it.

Mr. Chairman: Could you at the same time agree to alteration in the use of the word "commission" to "hearings tribunal?"

Ms. Gigantes: Yes, that is fine.

Mr. Revell: With the permission of the committee, if we are going to change "shall" to "may," the provision will now fit very nicely back into subsection 2 as a clause. Perhaps I could have the permission of the committee to restructure it as such. I may not have that motion ready before the committee finishes with this bill, but it does fit very nicely back into subsection 2, using the word "may."

Ms. Gigantes: I think we would all be agreeable to that.

Mr. Chairman: Do we have agreement on that? It is just a renumbering, frankly.

Mr. Ward: Who cares? I mean, I am not so sure the Conservatives are supporting the thrust.

Mr. Baetz: Yes, our concern here comes from a somewhat different direction. It was suggested by the parliamentary assistant that these sorts of clauses add increased rigidity; I think those were the words he used. It is really trying to do the work which an intelligent hearings tribunal would be doing. We just add layer upon layer upon layer of clauses in here, assuming we are going to tell the commission precisely how it should think and operate and do its job.

It just adds to the rigidity, to the inflexibility and to the complexity of the bill, which is already horribly complex. That is where we are coming from.

Ms. Gigantes: In fact, I think quite the contrary. If we have an amendment that says the commission may order the employer to adjust, it is that area in which the parliamentary assistant's "may" and "shall" indicated he was concerned about rigidity. I would prefer "shall" but I am willing to go with "may."

On the second point, I think it is very important that we spell out in a clause of this nature not simply that there is an employee or a group of employees whose wages may have been illegitimately reduced by an employer in the implementation of this legislation within the work place but also that

there may be other groups of employees in different job classes whose wage rates will have to change as a result of the initial infraction of the legislation by the employer. We are talking here about comparabilities, and if you reduce one group's wage level, then you are also going to have an effect, under this legislation, on the other group's wage level. It is precisely this notion that we feel the tribunal should specifically be empowered to address. Question?

Mr. Chairman: I can call the question, but I do not want to confuse the issue. We have a redrafting of this section by legislative counsel, and perhaps I should give an opportunity for that to be expressed to the committee now, so you will know what we are talking about. Then I will call the question.

Mr. Revell: This would require unanimous consent to reopen subsection 2, which has now been voted on, but I will give you the wording.

Mr. Chairman: Ms. Gigantes moves that subsection 24(2) of the bill be amended by adding thereto the following clause:

"(2a) Where the commission finds that an employer has contravened subsection 8(1) by reducing compensation, it shall order the employer to adjust the compensation of all employees affected to the rate to which they would have been entitled but for the reduction in compensation and to pay compensation equal to the amount lost because of the reduction."

If that motion carries, I will then ask for the unanimous consent of the committee to reopen section 22. We will then insert this clause in that section. That is the order in which I will call it.

Motion agreed to.

Mr. Chairman: I will ask now for the concurrence of the committee, with respect, and I would ask for your co-operation in this regard, because if you do not vote for it, it will simply be stuck in another section; we are only looking at the orderly flow of the bill.

I make that comment without trying to influence anyone's vote.

Interjections.

Mr. Chairman: I am simply asking now that we have the concurrence of the committee to reopen subsection 24(2). Carried.

So it is agreed that we can now put that clause in that section and in the proper order.

Mr. Baetz: We hope the same feeling of camaraderie and unanimity here will prevail when we make a similar proposal later on.

Mr. Chairman: I would hope that it would. It is that kind of co-operation that makes a committee effective in carrying out its work and its responsibilities, so I appreciate your comments.

Your amendment to subsection 23(3), Ms. Gigantes?

Ms. Gigantes: We will withdraw our amendment to subsection 24(3).

Mr. Chairman: All right. If there are any comments on subsection 24(3), the amendment has been withdrawn. I will call the vote on subsection 24(3). Is that carried? Carried.

## 1110

Mr. Chairman: You have already withdrawn the amendment to subsection 24(4). We can carry subsection 24(4), right?

Interjection: Actually, I think maybe we can carry it all.

Ms. Gigantes: ??Mr. Chairman, you have got my subsection 24(4a)?

Mr. Chairman: Yes. That is to follow what I am going to call now, which is subsection 24(4). Yours is a new subsection.

Shall subsection 24(4) carry? Carried.

Mr. Chairman: Ms. Gigantes, your new subsection 24(4a)?

Ms. Gigantes: I would like to stand this aside and get the advice on proper placement of this amendment from legal counsel. Because of the way our amendments were organized in the first place, I think what we might do if we place this one here is get ourselves into a whole confusion about mandatory posting date, which we want to leave as a matter to be clarified later.

Mr. Chairman: How does that affect clause 24(4)(a)?

Interjection: I think we are okay.

Mr. Chairman: Can we proceed with that?

Ms. Gigantes: Yes.

Mr. Chairman: It again deals with section 9.

Ms. Gigantes: That is fine. As long as we can come back to this as a renumbered clause somewhere. I do not know exactly how to do that procedurally, except perhaps to ask for the consent of the committee to do that.

Interjection: We had better caucus.

Mr. Chairman: Do you want to break now?

Mr. Ward: I think we could use a few minutes to caucus anyway. If we take this opportunity as our only break of the morning, maybe we can resolve some of these issues.

Mr. Chairman: All right. We will take a break at this point and then come back. There are couple of matters that have to be cleared up with the respective caucuses, so we will break now and resume in, say, 10 to 15 minutes.

The committee recessed at 11:12 a.m.

# 1136

Mr. Chairman: The committee can get started. Members of the committee, I have been asked by Hansard to remind you again that when you are speaking, if you would attempt to speak into the microphones it would be helpful. Apparently, your voices are somewhat muffled and they are having difficulty hearing some of the fine things you are saying.

I know there is always a bit of a temptation to turn to speak in response to a question or to respond to a member in a somewhat more personal way, but we have to remember that we do have an electronic medium that has to be considered as well. So if you would do that, it would be appreciated.

Mr. Ward, do you have any comments in connection with the issue that we left outstanding for you on which to caucus?

Mr. Ward: The only reason I asked that we take the break then was the next clause. There was a reappearance of the mandatory posting date, and I wanted to get some feel from all parties as to whether the principle of a mandatory posting date was to remain.

I think it is fair to say that, in one form or another, there will be a mandatory posting date that will require unanimous agreement at some point, once we determine that mandatory posting date, for legislative counsel to then go back through the bill and reinsert the reference where it is appropriate; a task that I do not envy, by the way.

I wonder whether the committee members would prefer to revert back to section 9 now, given the fact that we do not have drafted amendments on that. Perhaps we can get some suggested wording and resolve those issues now, or shall we just proceed on the understanding that a mandatory posting date does remain in the bill?

Ms. Gigantes: In the earlier suggestions that we had from the parliamentary assistant on the changes we might see surrounding the mandatory posting date, he spoke of the existence of clauses within the bill that would allow for an extension where appropriate. I am not certain whether that means there would be an extension available where appropriate and where the tribunal was agreeable to that extension only for the private sector or whether the clauses would also refer to any mandatory posting date that might be set for the public sector.

Mr. Ward: Actually, given the fact that we would reintroduce the concept of mandatory posting date, it would remain in there bearing in mind that there is still an onus on the part of both employers and the commission or the tribunal to be satisfied that the reasons for further extension are legitimate. The whole thrust was that there was an anticipation, particularly with public sector employers, that the process could get somewhat bogged down with consistent and, in all probability, legitimate arguments for extensions. We would retain—

Ms. Gigantes: The existing clauses?

Mr. Ward: -- the existing clause--

Ms. Gigantes: Providing flexibility.

Mr. Ward: -- and what we would do then is change perhaps the definition under section 9 of the mandatory posting date.

Ms. Gigantes: The existing clauses would apply both to the public and private sectord in terms of the ability for a request for an extension to go ahead?

Mr. Ward: Yes. Some of the private sector submissions that legislative research had provided us in fact did show that some of the large

employers that came before us also wanted the elimination of the mandatory posting date. We are not eliminating it, but I think we do have--

Ms. Gigantes: They have a longer period to comply.

Mr. Ward: They have a longer period. The three years could be difficult for some employers, but I think we all have cur doubts. They should in fact not be as great.

Ms. Gigantes: The posting date would be two years for a large private sector employer.

Mr. Ward: Two years; sorry.

Ms. Gigantes: Right. On that basis, if the parliamentary assistant wants to bring in an amendment to section 9, whenever the government is prepared to do that, we are prepared to—

Mr. Ward: I think we have some rough wording that may require the input of our Mississauga lawyer.

Ms. Gigantes: Do you want to do it now or do you want to--

 $\underline{\text{Mr. Ward}}$ : What is the preference? Why do we not deal with this after lunch when we have some better wording? We can now proceed on the assumption that mandatory posting date will continue.

Ms. Gigantes: Good enough.

Mr. Chairman: Then we can deal with clause 24(4)(a).

Ms. Gigantes: The government has withdrawn its amendment on clause  $24(4)(\overline{a})$ .

Mr. Ward: I believe we have, other than the consistent amendment with regard to "hearings tribunal."

Mr. Chairman: What do you wish to do with that then?

Mr. Ward: We are prepared to withdraw our amendment on clause 24(4)(a) and ask that it be voted as written, other than the blanket insertion that was covered off at the beginning of section 24 by Mr. Knight.

Mr. Chairman: Okay. With that one small wording adjustment, if you are all up to speed on where we are, clause 24(4)(a) is the one I will ask you to vote on. Is that clause agreed to? Agreed.

Ms. Gigantes: We have another amendment to subsection 24(4).

Mr. Chairman: Ms. Gigantes moves that section 24 of the bill be amended by adding thereto the following subsection:

"(4a) An order under clause (2)(aa) or subsection (2a) may require that all costs of proceeding before the commission be borne by the employer."

Ms. Gigantes: The purpose of the amendment is to provide the power for the commission to decide in a case where there has been a breach of the legislation, as under clause (2)(aa) or subsection 2a, that the cost of the

proceeding, both to the employee who has to lay a complaint and to the commission itself, may be assessed against the employer where the employer has breached those sections of the act. This provision is like the provision in the Labour Relations Act, which makes similar provisions.

Mr. Revell: There is a necessary editorial change because of the amendment we made earlier. The internal reference to subsection 2a in the first and second lines should really read as a reference to clause (ab). This was what we just passed a few minutes ago.

Ms. Gigantes: So that your subsection would read?

Mr. Revell: It will now read, "An order made under clause 2(aa) or subsection 2(ab) may require that all costs of the proceedings" etc.

Ms. Gigantes: Right.

Mr. Baetz: Could we have comments from the parliamentary assistant on this?

Mr. Chairman: I note he was hoping that you would ask him for some comments.

Mr. Baetz: We sure do, and we are looking for a very clear answer here--lucid.

Mr. Ward: It cannot be any clearer than to say we do not support the amendment.

Mr. Baetz: That is okay.

Mr. Barlow: I think it would be safe to say we do not support the amendment either. I do not think we have to spend much time on debate.

Mr. Chairman: Are there any further comments with respect to this proposed amendment?

Ms. Gigantes: With the clear intransigence on the subject that has been evident, I think we should simply vote.

Mr. Chairman: I was going to do that before you spoke. I thought you were going to add something further to the debate; that is why I gave you the floor again.

Motion negatived.

Mr. D. W. Smith: Before we move on to clause 24(4)(c), what does that really mean? "The review officer shall perform the duties of the employer and the bargaining agent, if any...." Has that been dealt with before? I admit I am only filling in.

Mr. Ward: Under certain situations, the review officer has an obligation to issue orders in order to arrive at the development of a plan if there are objections during the course of the preparation of that plan. Basically, I think that clause just iterates those duties. He is really not acting on behalf of any one, but both in that circumstance.

Mr. D. W. Smith: The review officer can almost take the place of the employer; is that really what it is saying?

Mr. Ward: And the bargaining agent.

Mr. Chairman: Okay. Can we deal with clause 24(4)(b) now? It is at the top of page 42 in the bill: "The order of the commission shall not provide for a compensation adjustment date that is different than the relevant date set out in clause 12(2)(e)." Is that agreed? Agreed.

Clause 24(4)(c)? Agreed.

Clause 24(4)(d)? Agreed.

Clause 24(4)(e)? Agreed.

Shall subsection 24(4), as amended, carry? Carried.

Next is subsection 24(5).

Ms. Gigantes: We would like to withdraw the notice that we would vote against subsections 24(5) and 24(6). That is page 78.

Mr. Chairman: Okay. Can we go back to subsection 5? Is there any further comment? Is that carried? Carried.

Is subsection 24(6) carried? Carried.

There is a Progressive Conservative motion on 24, as well. Mr. Baetz, did you wish to speak to it?

1150

Mr. Baetz: Yes, this would be an added subsection.

Mr. Chairman: Mr. Baetz moves that section 24 of the bill be amended by adding thereto the following subsection:

"(7) Where, upon dismissing a complaint, the director finds that the complaint was trivial, frivolous, vexatious or made in bad faith, the commission"—in the reading here, we had "director," but that referred to the proposal for our Employment Standards Act—"may order that the person complained against be compensated, in whole or in part, for that person's cost necessarily incurred as a result of the complaint."

Mr. Baetz: I think the reason for this addition is obvious. In cases where a complaint has been judged as being trivial, frivolous or vexatious, it could and very easily would cost the employer, in many instances, considerable amounts of money to get to that point. Even if the Pay Equity Commission ruled in his favour, the fact is it would still cost a lot of money. The proposal here is that the employer would be compensated in whole or in part--at least for some compensation.

We think this is a very fair proposal and we hope the government would support us in this. I kind of suspect I know where the third party stands on it, but I am sure the government, in its wisdom and its understanding of the spirit of equity and fairness as between employer and employees, will support us.

Mr. Chairman: Is there any further comment?

Mr. Barlow: A point of order first, Mr. Chairman, then I will let Ms. Gigantes speak if she wishes. Mr. Baetz, in reading it, said, "the director." I wonder if it should not be, "the appeals tribunal." It probably should say "the appeals tribunal."

Mr. Chairman: If this proposed amendment carries, they will make that editorial change.

Mr. Barlow: Okay.

Ms. Gigantes: I believe the parliamentary assistant indicated he wanted to add something to the discussion.

Mr. Ward: Actually, I just wanted to respond to the encouragement given by Mr. Baetz and indicate that the government will not support this amendment.

Mr. Baetz: I wonder if the parliamentary assistant will explain that rather strange stance on the part of the government.

Mr. Ward: Actually, I do not think it is strange. I think we just dealt with an amendment relative to cost that could or could not be incurred by an employee, and I believe that our position is consistent in this regard. We do not support it in this instance any more than we supported it in previous instances.

Mr. Barlow: There is a difference. The motion we dealt with previously was assessing a cost to the employer. This is not assessing the cost to the employee: this is assessing the cost of a frivolous complaint on the public purse, I suppose.

Mr. Ward: The whole point, the whole consideration of clauses in there to deal with frivolous complaints and the manner in which they are dealt with, was to circumvent situations that could create significant financial impact or cost as a result of being forced through a process on a frivolous matter.

I do not see what the great cost would be. The inclusion of the clause dealing with the dismissal of frivolous complaints is to offset the concern that generates this amendment. I just do not see the need for the inclusion of that subsection.

Mr. Baetz: Obviously, if there is little or no cost, then the employer would not be compensated. But in cases where there would be--and can you not imagine there will be cases where this will go on to the courts?

Mr. Ward: I really see the whole thrust of this subsection almost as one designed to intimidate in some way. I just do not agree with that kind of wording or the inclusion, or see the necessity for it.

Mr. Barlow: I think the committee was advised by certain employer groups, by labour lawyers, that it could cost up to \$50,000 for an employer to defend himself under this new act.

The review officers are only human. They could very well make a wrong decision on a complaint, whether it is frivolous or vexatious. The individual review officer could say, in his or her opinion, that it was not a frivolous complaint. The Pay Equity Hearings Tribunal could determine that it was a

frivolous complaint. By this time, the employer has spent hours and many dollars to defend himself or herself against what turns out to be a frivolous complaint, in the opinion of the tribunal as opposed to the review officer.

Mr. Ward: I just cannot accept the notion that any employer would incur \$50,000 in legal costs in getting the dismissal of a frivolous complaint.

Mr. Barlow: That was not my wording. That was from a labour lawyer.

Mr. Ward: I understand that. Certainly, there could be a situation where an appeal of that judgement could incur costs, but I just do not accept the argument that was made on behalf of those who made it.

Mr. Barlow: I guess that is a matter of opinion; your opinion against those who made that. What we are trying to put into place here is something that will deter complaints that are frivolous, vexatious or whatever terminology you wish to use.

Mr. Ward: I understand the intent of the deterrent.

Mr. Barlow: The employer is not going to sit back and say: "Hey, look, go ahead, dump all over me. I will just increase the compensation of employees, when, in fact, I feel totally innocent on it." They are not going to sit back. They are going to defend themselves. If it is a legitimate case, we are not suggesting for a moment that there should be any compensation to the employer, but if it is something that is not a legitimate complaint, if it is proven after days, weeks and months of trial and court appearances and whatever else, that it was a frivolous complaint, we are saying the employer should be reimbursed.

Mr. Ward: As you have indicated, we have an obvious difference of opinion. I want to restate that we do not support it. We feel the effect of the clause is, indeed, intimidating.

Ms. Gigantes: There was a recent ruling by a one-person hearing panel under the human rights legislation that a complaint that a review officer forwarded to the commission for hearing was, in fact, a complaint that was made in a frivolous, trivial or vexatious manner, or something of that same nature. In other words, the complaint should not have gone forward. There was also a judgement by that hearing officer that costs should be assessed against the commission.

I do not know whether they would be appealed. I have not heard of any appeal in that case. I am wondering whether there is any restriction on the ability of the tribunal to make such an order in any case.

Ms. Herman: Under the Canadian Human Rights Act, there is a specific provision that the costs in such circumstances will be borne by the commission. It specifically directs that it is not the complainant who pays for the case if it is trivial or frivolous; it is the commission.

In part, that is because it is the commission that has the decision-making power in determining whether a case goes on to a hearing.

Ms. Gigantes: That is right.

Ms. Herman: In this case, it is an automatic right of appeal under the Human Rights Code. The commission bears a responsibility for sending a

case which a board of inquiry deems to be trivial and frivolous to a hearing and exposing the employer to those costs.

Ms. Gigantes: There are different steps involved in the process.

Ms. Herman: The analogy is a bit difficult to fit because there are different steps. The reason in that case is that the commission has some of the responsibility for a trivial case going on to a board of inquiry hearing.

Ms. Gigantes: If the tribunal found that a case had gone forward in which an employer had to deal with the defence of a complaint that was vexatious or frivolous, what could the hearings tribunal do under this legislation as it is now laid out?

## 12 noon

Ms. Herman: Absent a specific authority to grant costs, there is considerable debate and there are decisions going every which way on whether tribunals have an inherent authority to order costs. To my knowledge, that is not an issue that has been resolved.

 $\underline{\text{Ms. Gigantes:}}$  What you are saying is that it would be ordering costs against itself.

Ms. Herman: In this case, it would be the hearings tribunal ordering the Pay Equity Office, the separate administrative office, to pay; but it is all part of the Pay Equity Commission, so the answer is yes. In the human rights situation, the tribunal is a totally separately operating body set up just for the purposes of a hearing.

Ms. Gigantes: Right.

Ms. Herman: In those cases, they are ordering the Ontario Human Rights Commission to pay the costs.

Mr. Baetz: This amendment should be regarded as a safety net. If, as the parliamentary assistant tells us, in the perfect world under which this legislation will be operating, it will never be required, this event will never happen, fine. There is no harm in having it in the legislation. It is at no cost to anybody, but it is at least a safety net.

Also, we are saying "may order." It does not say, "The commission shall in every instance," but it has the power to order if it sees fit to do so. I think it would be a very useful part of this legislation. We all know it is very complicated and is bound to result in some differences of opinion. Eventually, it is going to cost. Sooner or later, we will find cases where a frivolous or vexatious complaint has been made and so determined by the commission. In that case, what then? It costs the employer money, but we say: "Tough luck, old man. That is the cost of doing business today."

Mr. Ward: First, that is a pretty one-sided amendment, if that is the concern. Second, I want to go back to the whole notion of cost. From the outset, the thrust of the bill has been to encourage and facilitate access to the processes that are available. The whole notion of the assignment of costs can be argued on legalistic grounds, but it is also a notion and a concept we tried to avoid in the formulation of all the proceedings within the legislation. We have not been convinced on either side of this issue to enter the notion of the awarding of costs into the whole process.

Mr. Baetz: Which may mean we are living in a bit of a dream world.

Mr. Charlton: The Conservative members have made the intent of this amendment clear in the sense that they have said clearly that an award under this section would be an award paid by the commission. I do not see how that is clear in the amendment. Perhaps we could ask legal counsel for comment.

Ms. Herman: It is not clear in the amendment. The amendment makes no direction as to who will be ordered to pay the costs.

Mr. Baetz: We would be happy to stand this down to have further discussions with the other parties to see whether that could be clarified and perhaps even at the same time to deal with the issue of some compensation in a decision where an employee has found that he or she has had costs for unnecessary reasons.

Mr. Chairman: Before we stand it down, Ms. Caplan indicated she wants to speak to the issue.

Ms. Caplan: I think we are getting off track with the discussion as it relates to costs, given the thrust of the bill. Where a review officer is requested to come in, his first duty is to determine whether the complaint is frivolous, vexatious or trivial. If that happens, it goes no further. If you have this in there, it would encourage complaints to go forward for the assessment of costs and add the potential for the kind of escalation of costs that would come if the only way you could have reimbursement of costs at all was by going with a complaint to the commission.

The other is that generally, complaints are always going to be lodged against a plan or an employer. How you would even do an assessment from the other side following a decision I think complicates what your intention is, since the structure here is to immediately bring in a review officer who tries to mediate and makes the decision with virtually no cost involved within the terminology of trivial, frivolous or vexatious.

I understand the motivation and would say again I think it is misguided, given that what we have tried to set up is a process that is nonadversarial and nonjudicial until you reach the very last stage of the hearings tribunal process.

Mr. Baetz: Exactly. If in your perfect world this section would never need to be applied, that would be fine, wonderful. Let us hope it would not be, but it is there as a safety net.

Ms. Caplan: What I am saying is that my concern is that this type of clause would encourage the process to continue beyond the point where it should, which is where the review officer says, "This is a frivolous, trivial case," and it does not go any further. It would encourage the party or parties to take it on and increase the number of hearings before the tribunal on cases that have already been declared frivolous at the stage of a hearings officer, but because there is the potential for cost recovery, we keep going on. It seems to me there is that potential for that.

Mr. Baetz: There is no guarantee for cost recovery. Even if there is cost recovery, it need not be total cost recovery. Also, I just do not see where this would encourage employers to continue the process and to take it into the courts thinking that they would recover all their costs. This does not do that at all. In fact, the tribunal would still have to decide whether--

Ms. Caplan: I guess the point I am making is that if the review officer declares it frivolous, you now have a very good case for the fact that it is a frivolous complaint taken to the commission, against whatever costs you incurred up until that point. I think it would encourage far more complaints to the hearings tribunal, simply because it has been declared frivolous or it has been declared trivial. Now that you have had that ruling, "Let us appeal it and get our money back," whatever little amount it is. I think it is going to have the reverse effect of what you are suggesting.

Mr. Chairman: Before I go to Ms. Gigantes, I want to caution Mr. Baetz and his colleagues, who have already indicated they are going to stand this down for some additional discussion, that the difficulty with this is that it may in fact assess an additional cost against government. I know you are fully aware of the chair's ruling with respect to the expansion of government spending.

Ms. Gigantes: Do you call that substantial?

Mr. Chairman: Yes, I think there is the potential for substantial expenditures. I took Ms. Caplan's arguments into account during the course of the debate. She has made the point that there could be an assessment of additional costs against the commission, hearings tribunal or whatever, as a result of the process being followed through.

Again, I am not making a ruling at this point. I simply say that some sensitivity towards that question of the propriety of the motion has to be given by the mover in this particular case, or the motion will be ruled out of order by the chair.

Mr. Baetz: You have been interpreting in quite an opposite fashion from the way I have interpreted the remarks by the parliamentary assistant and Ms. Caplan, because they have been saying: "It is not likely to happen ever. The system is so good, we will never get to this. There may be a minor expense somewhere along the line, but never major."

Ms. Caplan: No, that is not what I said.

Ms. Gigantes: We do not have to deal with this again if there is not unanimous agreement. We can just go ahead and finish with this section. We are prepared to do that.

# 1210

Mr. Ward: I do not see what more can be added to the debate. I would ask that they reconsider standing it down and that we vote the issue. We only have today.

Ms. Gigantes: I could add more to the debate; I do not think it is necessary.

Mr. Ward: We could all say more. I do not know whether we could add more.

Mr. Baetz: We have said all that we are going to say on it. We know it will be lost. On behalf of all the employers, we thank all of you who are going to vote against it, but we have tried. We are ready for the question.

Mr. Chairman: You are going to reverse your position with respect to standing it down, then, and you are going to ask for the vote on the issue?

Mr. Baetz: We recognize futility when we see it.

Mr. Chairman: On subsection 24(7), moved by Mr. Baetz, I will call the vote. All in favour? I will vote in favour.

Ms. Caplan: You cannot vote.

Mr. Chairman: Yes, I can.

Ms. Caplan: Not unless there is a tie.

Mr. Chairman: All those against?

Mr. Charlton: It looks as though we have four members --

Motion negatived.

Mr. Chairman: Five. The tie is defeated, in any event.

I can add too, Mr. Charlton. I looked at the chairs very carefully. I counted the votes, and quite obviously I can vote, recognizing full well that the other five were going to vote the other way on the only remaining question to be answered. That is why I voted that way. It still did not make any difference.

Shall section 24 in total, as now amended, be carried?

Ms. Gigantes: Mr. Chairman, you understand we intend to raise 24a.

Mr. Chairman: Yes, that is understood. That has been set aside. But the balance of the section, I think we can do now.

Section 24, as amended, agreed to.

Mr. Chairman: Section 25?

Ms. Gigantes: Instead of placing the motion on section 25, I wonder if we could clarify two items. It is page 79 in our amendment proposals.

Clerk of the Committee: (Inaudible).

Ms. Gigantes: I have not moved them because I am not sure that it will be necessary to move them. Perhaps we could have an explanation from the government about how an order or decision will be carried out. You will see that under the subsection 24a(3) we are proposing here, we have spelled out the filing of the order or decision—of the tribunal, it would be in this case—in the Supreme Court. Second, perhaps we could have a government comment on a suggested subsection 24a(5).

Mr. Ward: Given the success rate of my explanations, I am going to defer to the staff.

Ms. Herman: The way we had proposed this issue to be dealt with was under the Statutory Powers Procedure Act, which provides in section 19 that a copy of a final decision of the tribunal may be filed with the Supreme Court and then enforced as an order of that court. That is why we had not specifically addressed that issue in the bill itself: a feeling that the procedures under the Statutory Powers Procedure Act were sufficient to deal with that and would apply in this instance.

Ms. Gigantes: Then you feel the proposed subsection 24a(3) is fully covered by--

Ms. Herman: I am not sure that subsection 24a(5) is, because section 19 of the Statutory Powers Procedure Act talks about enforcement "at the instance of the tribunal or of such party in the name of the tribunal in the same manner as a judgement of that court." I would have to think about it, but it looks like that means only the tribunal can do it or someone authorized by the tribunal, as opposed to a party who wants to go on his or her own. I have to re-read it.

It may be filed by either the tribunal or a party, but the enforcement, if it is for payment of money, is at the instance of the tribunal or of such party in the name of the tribunal. Don, would that mean an individual could go and enforce it or would one need the authority of the tribunal to do it?

Mr. Revell: It was when we were drafting the bill that I last looked at those provisions and I honestly cannot remember. In my opinion, it would not require the tribunal's consent to ask for enforcement of the order. We definitely did look at section 19 at the time of preparing Bill 154. When you look at Bill 105, there were very definitely provisions similar to Ms. Gigantes's motions here. I believe Ms. Gigantes also had motions that went further than the government motions.

I can express my philosophy in doing Bill 154. I just could not see any reason for expressing law that was already written with respect to how tribunals carry out their business, so we kept the procedural stuff with respect to the commission and the enforcement of its orders to the absolute bare bones in Bill 154.

Ms. Gigantes: My concern is this, if the tribunal under this legislation makes an order or decision and it is not carried out, does one as a party--presumably the complainant involved in that order or decision--need a lawyer to take one to the Statutory Powers Procedure Act and say, "Yes, I interpret subsection 19(2) to mean that you can make an application for the enforcement," if there has been no such application by the tribunal?

It seems complex, and if we just stuck it in the enforcement steps, then it would be very clearly there.

Mr. Revell: There are always two philosophies as to the drafting of legislation, whether each piece of legislation states everything or whether you leave those things that are stated in general laws in the general laws.

The problem with restating all the laws is that the statute book of Ontario, being the entire collection, gets to be terribly thick, with the same things being said over and over again.

## Ms. Gigantes: Right.

Mr. Revell: The other thing is that the Statutory Powers Procedure Act is probably one of the better-known pieces of legislation in Ontario. It was one of the great McRuer commission reforms.

If a person is having problems with enforcement, this is the very sort of provision that you go down to the commission and say, "Gee, you gave us that order and nobody is doing anything about it." If the commission does not want to take it up and enforce it, for whatever reasons, it would be only too

willing to say, "This is what you do," and point you in the right direction, which is exactly what restating it here is going to do.

The advantage of leaving things with the Statutory Powers Procedure Act is if the Statutory Powers Procedure Act is amended in any way, then everything that is in the Statutory Powers Procedure Act flows with the amendments, whereas if we start putting it in here and there is another great overhaul of the law, like there was with the McRuer commission report, it is the sort of thing that could be frozen in time until somebody gets around to looking at Bill 154 again, whichever chapter it has by that time.

My recommendation would be that we leave this sort of matter to the Statutory Powers Procedure Act.

# 1220

Ms. Gigantes: I can understand the argument for that. On the whole, I will accept that at this point.

My other inclination and the reason this amendment was one we have considered very seriously is that this is legislation we hope employees will not have to have lawyers to use. I suppose if we have a Pay Equity Office which is separate from the Pay Equity Hearings Tribunal and that office, which has dealt with the complaint and seen a decision rendered, is available to provide advice to employees, that problem may not be confronted. We will withdraw our amendments on page 79. Thank you very much, staff, for the assistance on this matter.

Mr. Chairman: I am going to ask the committee to break at this point, since it has finished a section. There are a couple of quick matters I want to discuss before you leave. One is with respect to timing. It is intended that we finish the bill by noon tomorrow. Is that not the timing you require, Mr. Charlton?

Ms. Gigantes: Twelve-thirty.

Mr. Chairman: Twelve-thirty is fine. I have some apprehensions about the way we are heading and the time that may be required to finalize all our discussions on the bill, and I would like to look at the options. If the New Democratic Party has its caucus starting when it leaves here at 12:30 on Thursday and is caucusing all day Friday, that means there is no opportunity for this committee to meet through the balance of the week. Effectively, our discussions are closed off as of 12:30 tomorrow.

If we cannot complete the bill—and I am hoping we can, depending on how quickly we can go through some of the more routine amendments—what options are open with respect to next week or whenever? I am addressing this to the clerk. I have not made provision in my schedule for the following week. I have other commitments; I am sure many of you have as well. I think we should look at that possibility, because I really do not know whether we will finish by noon or 12:30 tomorrow.

Ms. Gigantes: Why do we not consider that and see how far we get this afternoon?

Mr. Ward: I do not want to spend a lot of time discussing it, because I do not think there are a lot of options.

Ms. Gigantes: I do not either.

Mr. Ward: I think we can complete the bill tomorrow at 12:30.

Ms. Caplan: The other thing you might consider is that if we see some progress being made this evening and sit an extra half hour or an hour to see whether we could get through most of it tonight, so tomorrow would be just a final review, that might work. If we were over most of the really difficult things, with all of us attempting to limit debate, we might be able to complete the majority, if not all, of the bill by six o'clock this evening.

Mr. Chairman: There is a chance that we can finish by 12:30 tomorrow. I just wanted to caution the committee as to what our time frame was. Certainly, we do not want to disrupt the timing of the third party. It was considerate enough to allow the Conservative members to get away early last week, and I think the same consideration should be given to that party, since it has to break at that time. We will take a break now until two o'clock.

Mr. Baetz: I have just one quick comment, Mr. Chairman. It is obvious that we have to vote tomorrow at noon for the NDP. On the time of finishing our work here, I hope we will be finished by tomorrow noon as well, but I do not think we should paint ourselves into a corner where, suddenly, at the last minute, we are going to leave untouched some of the features of the bill that really deserve our attention.

Ms. Caplan: That is why we should do everything we could go through rapidly by six o'clock tonight, standing down anything there is going to be a lot of discussion on and then do that tomorrow morning. We may be able to expedite the process if we could go through and pick out those items over which there is no debate, get them done today without debate and then save the debate for those items we really want to have a discussion on.

Mr. Chairman: As we get a little further on this afternoon, I will try to give you a synopsis as to where we are and how much time it might take to complete the bill. We will keep you up to date on that aspect of it, but I am simply telling you that we are running into a time frame where we may have some difficulties.

The committee recessed at 12:25 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

WEDNESDAY, APRIL 8, 1987

Afternoon Sitting

# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

#### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Barlow, W. W. (Cambridge PC) for Mr. Rowe

Davis, W. C. (Scarborough Centre PC) for Mr. Partington

Pierce, F. J. (Rainy River PC) for Ms. Fish

Smith, D. W. (Lambton L) for Mr. Polsinelli

# Also taking part:

Pouliot, G. (Lake Nipigon NDP)

Sterling, N. W. (Carleton-Grenville PC)

Clerk: Mellor, L.

#### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Legislative Counsel

. MacDonald, W., Research Officer, Legislative Research Service

# Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

## LEGISLATIVE ASSEMBLY OF ONTARIO

#### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

## Wednesday, April 8, 1987

The committee resumed at 2:16 p.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Proader Public Sector and in the Private Sector.

Mr. Chairman: Members of the committee, we did complete our discussions, other than I think there is one subsection to be reopened in section 24. We can move on to section 25 at this point.

On section 25:

Mr. Chairman: We have a government motion on subsection 25(1).

Ms. Caplan moves that subsection 25(1) of the bill be struck out and the following substituted therefor:

"(1) Every person who contravenes or fails to comply with subsection 8(2) or subsection 34(5) or an order of the hearings tribunal is guilty of an offence and on conviction is liable to a fine of not more than \$2,000, in the case of an individual, and not more than \$25,000, in any other case."

Ms. Caplan: I think it is self-explanatory.

Mr. Chairman: Comments from committee members?

Ms. Gigantes: Is the change that has been made here the addition of the words "or an order"?

Ms. Caplan: Yes, and it also states the subsections. The references to subsection 8(2) and subsection 34(5) have been added, the words "hearings tribunal" replace the word "commission" and it adds the order specifically.

Mr. Chairman: The amount of the fines remain the same?

Ms. Caplan: Yes.

Ms. Gigantes: If an employer and/or a bargaining agent simply fail to act on an order, is that called failure to comply?

Ms. Caplan: It sounds to me like failure to comply, if your order is issued and you do not do anything. Staff, would you agree? Yes.

Ms. Gigantes: What if, aside from subsection 8(2) and subsection 34(5), either an employer or bargaining agent does not comply with the act as a whole?

Ms. Caplan: This is failure to comply under specific subsections, and it makes it clear as to what then is a contravention. The original wording

just did not make this qualification. It is for clarification purposes. It is more specific.

Ms. Gigantes: What we are talking about in subsection 8(2) is the intimidation of an employee or the prevention of the exercise of the rights of the employee and in subsection 34(5) the obstruction of a review officer.

Ms. Caplan: That is correct.

Mr. Chairman: I will call the motion on subsection 25(1). All in favour of the amendment? Opposed?

Motion agreed to.

Mr. Chairman: Shall subsection 25(1), as amended, now carry? Carried.

Ms. Caplan moves that subsection 25(2) of the bill be struck out and the following substituted therefor:

"(2) If a corporation or bargaining agent contravenes or fails to comply with subsection 8(2) or subsection 34(5) or an order of the hearings tribunal, every officer, official or agent thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted."

Ms. Caplan: This is clarification of the original intent within the bill as printed, and adds the specific subsections and the words "an order of the hearings tribunal."

Ms. Gigantes: If there is an order of the tribunal and the party seeking the benefit of the order either has the tribunal file the order with the Supreme Court for enforcement or seeks to have it enforced under the rules of proceeding, how does this relate? What we are saying here is there does not have to be a court judgement of guilt; in other words, there does not have to be an order filed in the Supreme Court.

Ms. Herman: This is an additional remedy. It is an offences section which enables someone to go to court in a quasi-criminal, if you will, proceeding under the Provincial Offences Act. It is separate from having the order registered in the Supreme Court of Ontario and enforced through that way. This is an offence with the penalties that would flow from that.

Ms. Gigantes: That would only occur, if I read the legislation properly, with the agreement of the tribunal?

Ms. Herman: That is correct.

Ms. Gigantes: Again, we are adding two specific subsections of the legislation dealing with intimidation or the prevention of exercise of rights and the obstruction of a review officer or an order of the tribunal itself.

Ms. Herman: That is correct.

Mr. Chairman: Shall the amendment carry?

Motion agreed to.

Mr. Chairman: Shall subsection 25(2), as amended, carry? Carried.

Ms. Gigantes has withdrawn the NDP amendment.

Shall subsection 25(3) carry? Carried.

Ms. Caplan moves that subsection 25(4) of the bill be amended by striking out "commission" in the last line and inserting in lieu thereof "hearings tribunal."

Ms. Caplan: That is just technical, to change the name to make it consistent with what we have already moved.

Mr. Chairman: Shall the amendment carry?

Motion agreed to.

Mr. Chairman: Shall subsection 25(4), as amended, carry? Carried.

Section 25, as amended, agreed to.

Mr. Chairman: On section 26, part V of the bill, administration: I do not have any amendments. Shall 26 carry?

Ms. Caplan: You do not have the government amendment?

Mr. Chairman: I do not have it.

Ms. Caplan: It is in your book. Section 26 has already been carried, I believe. We discussed that before and we dealt with the Pay Equity Commission. the hearings tribunal. We have dealt with that.

On section 27:

Mr. Chairman: We have government amendments which are technical in nature and simply substitute the same words in subsections 27(1), (2), (3) and (4). Without reading it, I will have Ms. Caplan move motions on the four, and we will pass them all together.

Ms. Caplan moves that subsections 27(1), (2), (3) and (4) of the bill be amended by striking out "commission" where it appears and inserting in lieu thereof in each instance "hearings tribunal."

Shall the amendment to subsections 27(1) to (4) carry?

Motion agreed to.

Mr. Chairman: Shall subsections 27(1) to (4), as amended, carry? Carried.

Subsection 27(5)?

Ms. Gigantes: We have a note of a government motion that indicates we should be voting against.

Ms. Caplan: Actually, I think the more appropriate motion is that the government move to delete subsections 27(5) and 27(6), because subsections 26(3) and 26(4), as set out in the previous motion, now do what those other subsections do. I think a motion to delete is in order.

Mr. Chairman: Well, move such a motion.

Ms. Caplan: Or just vote against it?

Ms. Gigantes: Just vote against the section.

Ms. Caplan: All right.

Mr. Chairman: You can vote to delete it or vote against the section.

Mr. Baetz: I have always wanted to vote against a government motion.

Ms. Caplan: In other words, I vote against.

Mr. Chairman: So, effectively, this is on subsection 5.

Ms. Caplan: And 6.

Mr. Chairman: Both together?

Ms. Caplan: That is right.

Mr. Chairman: Shall subsections 5 and 6--

Ms. Gigantes: We have an amendment to subsection 27(6).

Mr. Chairman: All right. Let us do subsection 27(5). That is why I asked the question.

Shall subsection 27(5) carry? Opposed? That is lost. Delete subsection 27(5).

We will renumber, if you will allow legislative counsel to do that. We will have to move up now, since we are deleting subsection 5, but go to subsection 6.

Ms. Gigantes: Before I place the motion, let me ask about it. The intent of our motion was to stop subsection 6 right after "the Public Service Act," in the third line. Our concern here is that the commssion is being encouraged to engage in contracts for the carrying out of its mandate, as opposed to appointing employees under the Public Service Act.

Mr. Revell: I believe the object that you were seeking, Ms. Gigantes, is reflected in subsection 26(3), as set out in the government motion that we approved the other day.

Ms. Gigantes: I was afraid of that.

Mr. Revell: It reads, "Such employees as are necessary for the proper conduct of the commission's work may be appointed under the Public Service Act to serve in the Pay Equity Office."

 $\underline{\text{Ms. Gigantes:}}$  We will delete our amendment to subsection 27(6). Thank you very much, counsel.

Mr. Chairman: We do not have an amendment to subsection 27(6), so shall 27(6) carry? Opposed? It is deleted.

Shall section 27, as amended, carry?

Section 27, as amended, agreed to.

On section 28:

Mr. Chairman: We have a technical amendment on the part of the government.

Ms. Caplan moves that section 28 of the bill be amended by striking out "commission" where it appears and inserting in lieu thereof in each instance "hearings tribunal."

Shall that amendment carry?

Motion agreed to.

Mr. Chairman: We shall move on to subsection 28(2).

Ms. Caplan moves that subsection 28(2) of the bill be amended by striking out clauses (a) and (e). Do you wish to offer any explanation as to why you want those deletions?

Ms. Caplan: I think they are self-explanatory. Do you want to spend any time reading through them? That is already covered, I believe, later on.

Mr. Chairman: Could we have that explanation from legislative counsel? Are you saying they are redundant?

Mr. Revell: Yes. In splitting the commission into two separate parts, the Pay Equity Hearings Tribunal and the Pay Equity Office, those functions that are not appropriate to the hearings tribunal, i.e. the appointment of review officers, which is in clause (a), and the conducting of research and the production of papers, which is in clause (e), are going to be transferred to the branch that is going to be known as the Pay Equity Office. Therefore, they are deleted from this subsection.

 $\underline{\text{Ms. Caplan:}}$  Because the tribunal will not have these positions. So it is really technical.

Mr. Barlow: Where are they picked up then?

Ms. Caplan: They are picked up in the administrative section, where we have defined the duties and responsibilities of the hearings tribunal, as opposed to the Pay Equity Office.

Mr. Revell: Section 32a, Mr. Barlow.

1430

Mr. Chairman: I think we can save some time by grouping these. I will call for clauses 28(2)(a) and (e), and you will vote against them. Shall clauses 28(2)(a) and (e) carry? Opposed?

Motion negatived.

Mr. Chairman: I will do clauses 28(2)(b), (c) and (d) together. Any questions on those three? We have no amendments that I am aware of.

Ms. Gigantes: We have an amendment that is labelled 28(2)(e). It now

becomes relevant to section 32a of the government amendment, and I will just give notice that we would like to raise those issues at that point.

Mr. Chairman: All right. You are not going to put that amendment at this time, so I will ask the committee to consider the vote on clauses 28(2)(b), (c) and (d) together, take them as a group. Is that satisfactory?

Shall clauses 28(2)(b), (c) and (d) carry? Carried.

Let us go to subsection 28(3). I will do the whole subsection together as amended.

Clerk of the Committee: It is Ms. Gigantes's amendments on pages 85 and 86, to add clauses (f) to (q).

Mr. Chairman: No, those were all additions to subsection 28(2) which we have already dealt with.

Clerk of the Committee: She is moving those as well.

Mr. Chairman: What are you doing with that group of amendments, Ms. Gigantes?

Ms. Gigantes: I believe that the clauses we have outlined there are split into other sections of this bill at this stage.

Mr. Revell: In just taking a look very quickly at the motions that are set out on pages 85 and 86 of the NDP package, it strikes me that clauses (g), (h), (i) and (j) most definitely are covered by the Statutory Powers Procedure Act.

Clause (1) goes to the power to enter. That power is given to the review officers under a subsequent provision. Day-to-day monitoring in clause (m)--in section 28 we are dealing with the hearings tribunal, and monitoring goes to the powers of review officers, I would submit. Maybe these are again provisions that should be stood down until later.

I have a feeling that the ones that do relate to the commission or to the hearings tribunal itself are already covered in the bill, except possible clause (q) which is extending any time limit mentioned in this act. There is going to be a regulation-making power set out in section 35 of the bill which provides for very limited abilities to extend time limits. It is going to be in clause (g), I believe, and the hearings tribunal would only be able to extend power in the limited circumstances set out in that clause.

As to policy, we can discuss that with the ministry, but the legal effects of your amendments are dealt with in the bill in various ways.

Ms. Gigantes: I am quite happy to deal with these items as they arise under other sections, simply for orderly process. My concern has been that, in looking at (g), (h), (i) and (j), it is so helpful in legislation of this nature to give the person who is looking for redress under the legislation a clear understanding of the process and procedure within the body of the bill itself.

Again, I will bow to the view of legislative counsel that it is best

left to the Statutory Powers Procedure Act. I wish we could attach a little handbook to every copy of this legislation for when anybody wants to use it.

Mr. Chairman: Are we ready to vote on it?

Ms. Gigantes: Let us stand these items aside and we will vote on them when the items come up under the other sections.

Mr. Chairman: So we can vote on subsection 28(3)? Shall subsection 28(3) carry? Carried. Shall subsection 28(4) carry? Carried. Shall subsection 28(5) carry? Carried.

Ms. Gigantes: We have another amendment to section 28. It is on page 87. It is the addition of a subsection 28(6).

Mr. Chairman: Ms. Gigantes moves that section 28 of the bill be amended by adding thereto the following subsection:

"(6) The commission shall allow any person reasonable access to the information received by it."

This ostensibly would be subsection 28(6).

Ms. Gigantes: That is right.

Mr. Chairman: We have a brief amendment. It is fairly self-explanatory. Shall the amendment carry? Opposed?

Motion negatived.

Section 28, as amended, agreed to.

On section 29:

Mr. Chairman: Ms. Caplan moves that section 29 of the bill be amended by striking out "commission" where it appears and inserting in lieu thereof in each instance "hearings tribunal."

Mr. Barlow: On section 29, before it is completed, it says here that the final appeal rests with the tribunal or with the pay commission. Is that right? What about matters of fact or law? Can they go to the Divisional Court or any higher court at all?

Mr. Ward: You can appeal to the courts on a point of law.

Ms. Herman: With judicial review, it would not be an appeal of fact or law, so the availability of judicial review under the Judicial Review Procedure Act-it is a limited sort of appeal on issues of jurisdiction or where natural justice has not been followed and so forth, or where a mistake in law has been made such that the tribunal loses jurisdiction.

Mr. Barlow: It could go for a judicial review at that point?

Ms. Herman: Yes.

Mr. Barlow: Okay, that is fine.

- Mr. D. W. Smith: Should it not be mentioned in there that it could do that?
- Ms. Caplan: No, it is implicit. We have done subsections 29(1) and 29(2)?
- Mr. Chairman: Subsection 29(1) is all we have done. We have moved to subsection 2. Have the Progressive Conservative amendments all been withdrawn?

Interjection: Yes.

Ms. Caplan: On subsection 29(2) the government motion is the same, to change "commission" to "hearings tribunal."

Mr. Chairman: It is a technical amendment on subsection 2. In favour? Carried.

Section 29, as amended, agreed to.

On section 30:

Mr. Chairman: Ms. Caplan moves that section 30 of the bill be struck out and the following substituted therefor:

"30. Except with the consent of the hearings tribunal, no member of the hearings tribunal, employee of the commission or person whose services have been contracted for by the commission shall be required to testify in any civil proceeding, in any proceeding before the hearings tribunal or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this act."

Ms. Caplan: That is the same with the names changed; it is a technical amendment.

Section 30, as amended, agreed to.

On section 31:

Ms. Caplan: We ask that section 31 be stood down until we have dealt with 32a.

Ms. Gigantes: We have an amendment to section 31 and we will also carry that amendment.

Ms. Caplan: So we will stand down section 31 and deal with subsection 32.

Mr. Chairman: Make a note to stand down section 31. We will move to subsection 32(1).

On section 32:

Ms. Caplan moves that section 32 of the bill be amended by striking out "commission" where it appears and inserting in lieu thereof in each instance "hearings tribunal."

Ms. Caplan: This is throughout all the clauses of the bill.

## 1440

Mr. Chairman: You are going to have this memorized shortly.

Ms. Caplan: Shortly?

Motion agreed to.

Mr. Pierce: Any debate?

Mr. Chairman: If you wish.

Ms. Caplan: I have an amendment to section 32a.

Mr. Chairman: Are there any questions on clauses 32(1)(a), (b) or (c)? I will take them all together unless there is reason to break them into separate parts.

Ms. Caplan: No.

Mr. Barlow: What are you up to now?

Mr. Chairman: Subsection 32(1). My suggestion was that we take clauses (a), (b) and (c) together.

Ms. Caplan: Right. Carried.

Mr. Chairman: I am glad you are ready. They are still discussing.

Ms. Caplan: They are more than ready. Subsection 32(2)?

Mr. Chairman: Listen, do you want to trade places?

Ms. Caplan: Did you not say you had to be out of here by 12:30 tomorrow? I am assisting, Mr. Chairman.

Mr. Chairman: I am prepared to move as quickly as possible, but I can tell you right now what is going to happen.

Ms. Caplan: They will not let us go any faster than--

Mr. Chairman: If you are ready for clauses 32(1)(a), (b) and (c), I will call those. Carried.

Shall subsection 32(2) carry? Carried.

Shall subsection 32(3) carry? Carried.

We have carried up to subsection 3 then and stopped at subsection 4.

Mr. Chairman: Mr. Ward moves that in subsection 4 the first reference to "commission" remains as "commission" and the second reference becomes "hearings tribunal".

Ms. Caplan: I did that for all of them.

Mr. Ward: No, the first one stays.

Mr. Chairman: Let us get rid of this amendment first. Shall the amendment proposed by the parliamentary assistant carry?

Motion agreed to.

Mr. Baetz: We have a problem with the third line, "or group of employees wishes to remain anonymous." We have trouble with "anonymous." I will wait for a minute because he is busy with something else.

In subsection 4, it now reads "or group of employees wishes to remain anonymous." We have real problems with that "anonymous" and we would like to hear from you why you feel that should remain in the bill.

Mr. Ward: We had quite a discussion of this during the course of the public hearings. I think it is fair to say that an anonymous complaint cannot be lodged with the commission because obviously an agent or an employee has in fact to provide information of the place of employment and whatever in terms of lodging the complaint. We do not believe there has to be any requirement on the part of the employee necessarily to notify himself or herself to the employer and increase the possibility of intimidation.

Mr. Barlow: Is it not illegal for intimidation? That is not acceptable, is it, under the act?

Mr. Ward: That is correct, but I still believe that the potential exists for a very uncomfortable and difficult situation for an employee.

## Mr. Barlow:

How does an employer know who all he is trying to build a case to defend himse lf against? If a complaint has been lodged, he does not necessarily know what so rt of case he is building.

Mr. Ward: When the complaint is lodged, the case is built around the compensation practices and the job classes that are involved. In those terms, the complaint is based on the specifics of the contravention.

Mr. Baetz: Is there anywhere in any other legislation this reference to remaining anonymous? I would like to hear from staff or from legal counsel on that. I have been under the impression that if you lodge a complaint, you have to identify.

Ms. Gigantes: You have to have an agent under this section, if you take a look at it. There is somebody there as a party to the proceedings who will be the agent of the person making the complaint. That provides some kind of buffer between the employee and the employer in the sense that the employer need not find out who exactly among his or her employees has laid the complaint, because that can be an invitation for the employer to attempt retribution.

 $\underline{\text{Mr. Baetz:}}$  But is this a feature of other legislation? I cannot think of any one but probably there is, or there may not be.

Ms. Herman: I am not sure if this is a feature of other legislation. There are certainly other instances in which third parties can lay complaints so the employer is in a similar situation in so far as the alleged injured party is not the person signing the complaint, but a third party is.

The important point in this is that there will be disclosure of all the facts gathered in the investigation. With any evidence that is let at a hearings tribunal, the employer or the lawyer for the employer will have an opportunity to cross-examine on that evidence, so all the facts will be before both parties and both parties will have full access and opportunity to examine and cross-examine on any of that evidence.

Mr. Barlow: The whole process could be gone through, a decision made and the employer not know who filed the complaint and why he or she is trying to defend himself or herself. There are going to be facts there but the employers are not going to be able to deny some of the facts if they are deniable.

Ms. Caplan: This is not based on an individual. This is based on the compensation practices.

Mr. Ward: The compensation practices and the job class are that; a job class and the compensation practices. Why should there be any mechanism that leaves it open, as it were, for an employer to take whatever steps he may deem appropriate against the messenger with regard to this. It is not like the employer is left to swat at air. There is an agent who could be representing the employee. There are the specifics of the case and a complaint to be dealt with. I do not think we can add any more to the debate.

Mr. Baetz: Who is the agent likely to be? Who would the agents normally be in this instance?

Ms. Gigantes: It could be a lawyer. It could be a representative of a women's group who stands in place of female employees in a nonorganized firm.

Mr. Baetz: But there is nothing in the agent's role that would likely say to the complainant, "I really think your case is not on solid grounds; it may even be frivolous."

Ms. Gigantes: The review officer looks at that.

 $\underline{\text{Mr. Baetz}}$ : When does the review officer enter into this scene? He deals with the agent.

Ms. Gigantes: Always before a hearing is called at the Pay Equity Hearings Tribunal.

Mr. Ward: Before it goes to a hearing, he can make that determination.

Mr. Barlow: Where does it say--I may be missing something--"employment practices"? Where is that phraseology? It is not in this clause.

Ms. Gigantes: All the complaints are about that.

Ms. Caplan: The whole context of this legislation is that you are not dealing with individuals, but with job classes, compensation plans and systems. You are not talking about the person doing the work but the type of work and the value of that work as compared to other work. You are talking about work as opposed to persons. It is implicit—it is throughout the entire legislation—that if a complaint is lodged, it is about the personnel practices and the compensation practices as opposed to against an employer. It

is his practices. Similarly, it is not about an employee but about the job. It is not a personal grievance at all.

## 1450

Mr. Barlow: But that is not what it says in this clause, as I read it here. It says, "Where an employee or group of employees advises the commission in writing that the employee or group of employees wishes to remain anonymous, the agent of the employee or group of employees shall be the party to the proceeding before the...."

Ms. Caplan: It refers to a proceeding.

Mr. Barlow: A court case is a proceeding.

Ms. Caplan: It is a standard rule of agents, that is all. I am not sure what your problem is.

Mr. Barlow: My problem, as I said before and as we both said in the first place, is somebody or some group of employees is lodging a complaint about a particular situation in their place of employment.

Ms. Caplan: Not a particular situation; about the practices of personnel and compensation.

Mr. Barlow: Still, somebody has to lodge the complaint before a review officer comes in. The employer does not know who he or she is and why he or she is defending himself.

Mr. Pierce: How do you know it is an employee or a group of employees within that organization?

Ms. Caplan: It must be; the act stipulates it.

Mr. Pierce: It could be a third party.

Ms. Caplan: The act stipulates that it must be an employee or a group of employees.

Mr. Pierce: Where?

Ms. Gigantes: It says that right there in that clause. Look at it. You have to apply in writing to the Pay Equity Hearings Tribunal.

Ms. Caplan: In order to be party to a proceeding.

Mr. Pierce: The employer will never know.

Mr. D. W. Smith: The employee is just writing to the commission, and we ask the commission not to say anything about who they are. Is that not what it is?

Ms. Caplan: It is just the section of identity, where you are not in a personal complaint but a complaint on practices.

Ms. Gigantes: I think we should vote.

Mr. D. W. Smith: The employer cannot take it out on the employee.

Ms. Caplan: That is what it is.

Mr. D. W. Smith: I think that is what it is all about.

Mr. Chairman: I will try to contain myself.

Mr. Baetz: Why do you not just call the question?

Mr. Chairman: I am prepared to call the question as soon as the debate is completed.

Ms. Gigantes: We are ready.

Mr. Chairman: I will call the vote. On subsection 32(4), all in favour? Opposed? Carried.

Subsection 5? Subsection 5 is carried.

Section 32, as amended, agreed to.

Ms. Gigantes: We have section 32a to propose.

Ms. Caplan: The government has a motion with regard to section 32a.

Mr. Chairman: The government goes first.

Ms. Caplan: I move that the bill be amended by adding thereto the following section:

"32a(1) The Pay Equity Office is responsible for the enforcement of this act and the orders of the hearings tribunal.

- "(2) Without limiting the generality of subsection 1, the Pay Equity Office.
- "(a) may conduct research and produce papers concerning any aspect of pay equity and related subjects and make recommendations to the minister in connection therewith;
- "(b) may conduct public education programs concerning any aspect of pay equity and related subjects;
  - "(c) shall provide support services to the hearings tribunal;
  - "(d) shall conduct such studies as the minister requires --

Mr. Ward: Excuse me.

Ms. Caplan: Do we have a new one?

Mr. Ward: We have an (e).

Ms. Caplan: "(d) shall conduct such studies as the minister requires and make reports and recommendations in relation thereto;

"(e) shall conduct a study with respect to--"

Mr. Chairman: I am sorry to interrupt. I think we had better hold for a moment. These copies have not been distributed. We have a revised amendment. It is not the same as the one you were given earlier. So that we will all be singing from the same hymnal, I think we should pause and hold for a moment.

Ms. Caplan: I will stop after clause (d).

Mr. Ward: I have been committing to memory everything she was saying, so I do not need a copy.

Mr. Chairman: I realize you were doing that.

Mr. Pierce: Is this a break?

Interjection: Not for long. Do not leave.

Mr. Chairman: I guess there will have to be a break. I suggest we break for five minutes. It is not the appropriate time but I have no choice. We have to circulate the amendment.

Ms. Gigantes: Could we not leave that and go on to the next one?

Mr. Chairman: We could do that. I do not want to cover something that is not before you. We will move on to section 33.

On section 33:

Mr. Chairman: Ms. Caplan moves that subsection 33(1) of the bill be struck out and the following substituted therefor:

- "(1) The head of the Pay Equity Office shall designate one or more employees of the office to be review officers.
- "(la) Review officers shall monitor the preparation and implementation of pay equity plans, shall investigate objections and complaints filed with the commission and shall attempt to effect settlements or take such other action as is set out in this act or in an order of the hearings tribunal."

Ms. Gigantes: I would like to move a small subamendment to that. It would be to subsection la, to remove the word "shall" and, in accordance with our earlier amendment, insert the word "may," because we had determined that there may be cases in which it would be a waste of everyone's time for the review officer to have to try to effect a settlement.

Mr. Ward: That is okay.

Ms. Caplan: That is fine. That is in subsection la.

Mr. Chairman: With the concurrence of the mover of the amendment, and to tidy it up and to avoid having to calling for amendments to amendments, if you will agree to include that--

Ms. Caplan: That is fine. So the fourth-bottom line will read "and may attempt to effect settlements"?

Ms. Gigantes: Yes.

Ms. Caplan: Agreed.

Mr. Revell: One point, Mr. Chairman: In the third-last line, the line that reads "settlements or take such other take such other action," if there is a course of action prescribed by the act or in an order of a hearings tribunal, in that case I would think that it should be "shall." So it is "may attempt to effect settlements--

Interjection: "Or shall."

Mr. Revell: I think "and shall take" would be in fact better.

Ms. Caplan: Perhaps I will read the motion again, just to be clear. Dispense, or shall I read it through?

Mr. Chairman: I think it is clear to everyone what we have done. Are there any questions with respect to what is being proposed?

Ms. Caplan: "May attempt to effect settlements and shall take such other action as is set out in this act."

Mr. Chairman: Okay. That is the amendment. Is there any further comment on the amendment? Shall the amendment carry?

Motion agreed to.

Mr. Chairman: Shall we go on to subsection 2?

Ms. Caplan: We certainly shall, or may.

Mr. Chairman: We may go on to subsection 2. You shall go on to subsection 2. Okay. There are no amendments for subsection 2. Shall subsection 2 carry? Carried.

Clause (a)? Carried.

Clause (b)? Carried.

Clause (c)? Carried.

Clause (d)? Carried.

Clause (e)? Carried.

Shall subsection 2 and all of the subsequent clauses carry? Carried.

Subsection 3? Carried.

We have copies available of section 32a now, so let us distribute those.

Ms. Caplan: I have read in everything to the end of clause (d). Shall I not read it again, but dispense and start at clause (e)?

Mr. Chairman: I would rather you start where you left off.

Just for the record, Ms. Caplan moves that the bill be amended by adding

thereto the following: subsections 32a(1), 32(2), clauses 32a(2)(a), (b), (c), (d) and:

- "(e) shall conduct a study with respect to systemic gender discrimination in compensation for work performed in establishments that have no male job classes and, within one year of the effective date, shall make reports and recommendations to the minister in relation to redressing such discrimination.
- "(3) The Lieutenant Governor in Council shall appoint a person to be the head of the Pay Equity Office and that person shall be the chief administrative officer of the commission.
- "(4) The minister may require the Pay Equity Office to conduct such studies related to pay equity as are set out in a request to the head of the office and to make reports and recommendations in relation thereto.
- "(5) Not later than the 30th day of June in each year, the head of the Pay Equity Office shall make an annual report to the minister on the activities and affairs of the commission and the minister shall table the report before the assembly if it is in session or, if not, at the next session."

# 1500

Mr. Chairman: Before we discuss section 32a, there is one small one piece of housekeeping. I forgot to call for the concurrence of the committee with respect to section 33, as amended. Shall section 33, as amended, carry?

Section 33, as amended, agreed to.

On section 32a:

Mr. Chairman: Now, Ms. Caplan can go ahead. She has read the amendment. Are there any questions with respect to section 32a?

Ms. Gigantes: Yes, there certainly are, Mr. Chair. We have another amendment to section 32a, and it really relates to the government's clause 32a(2)(e). That is the question of what will be the mandate of the commission in terms of providing a procedure for providing pay equity in the case where there are no male comparables, in other words, the kinds of establishments which have generally been called all-female, even though there may be one or two male employees within those establishments.

I am prepared for us to go ahead and vote everything down to clause 32a(2)(d), but I would then like to make recommendations for changes to clause (2)(e).

Mr. Chairman: Well, let us do those.

Interjections.

Mr. Chairman: There is a technical point that we have to clear up before we can proceed. Do you have any questions with respect to section 32a down to clause 32a(2)(d)? I will call those all in one block, if you are agreed. Are you still prepared to vote to the end of (d)?

Ms. Gigantes: Yes, Mr. Chairman. There is one other item we would

like to add to the list, but it could be a new clause (f).

Mr. Chairman: Okay. We can always add to the section even after we have closed it. Mr. Baetz, do you have any concerns you wish to express on any of those points in the proposed amendment?

Mr. Baetz: No, except, of course, our basic one with our Employment Standards Act. We will go with this.

Mr. Chairman: Okay. I will call for agreement of the committee on subsections 32a(1) and 32a(2) and all of the various clauses 32a(2)(a) through (d). Shall that carry? Carried.

Do you wish to discuss that new section that you had raised a moment ago, because it would be appropriate to do that now before I go to subsection (3)?

Ms. Gigantes: No. It would be appropriate, but we do not have copies of it any more. Apparently, they have disappeared into thin air somewhere, and legislative counsel is now making copies.

Mr. Chairman: The gremlins have arrived.

Ms. Gigantes: If we like, we could go ahead and deal with subsections 32a(3), (4) and (5).

Mr. Chairman: Is there agreement from everyone that we can come back to (2)? Let us go to (3). Ms. Gigantes, is there anything on (3)?

Ms. Gigantes: No.

Mr. Chairman: Mr. Baetz, is there anything on (3)?

Mr. Baetz: No.

Mr. Chairman: Shall subsection 32a(3) carry? Carried. Subsection 32a(4)? Carried. Subsection 32a(5)?

Ms. Gigantes: We have an amendment.

Mr. Chairman: Subsection 32a(5) is not carried.

Mr. Chairman: Ms. Gigantes moves that the words, "the 30th day of June," be changed to "the 30th day of March."

Ms. Gigantes: The reason for that is, very often by the time the 30th day of June arrives, the House is into windup stage preparatory to summer recess, and we would like to make sure that the report reached the Legislature in time for some discussions at the legislative level before summer recess. If there is any indication of--

Mr. Ward: It really does not matter. It still reads that they "shall table the report before the assembly if it is in session or, if not, at the next session."

Ms. Gigantes: Yes, but when we are setting up an arbitrary date in any case, why should we not set up one that is convenient for administrative purposes and that provides the Legislature with the ability to deal with it?

Interjections.

Ms. Caplan: That system has nothing to do with the--

Mr. Barlow: Would you go into the calendar year with it?

Ms. Caplan: Sure.

Mr. Ward: It is capable of about a million other things.

Ms. Caplan: Each session of the calendar year session, but the fiscal year is March 31, so it has nothing to do with it. You can pick any date you want.

Mr. Chairman: Does the government feel strongly about the date?

Mr. Ward: No.

Mr. Chairman: Does the opposition feel strongly about the date?

Mr. Barlow: Make it February 20; that is my birthday.

Mr. Chairman: I cannot think of a date that would be more appropriate, knowing your enthusiasm for this legislation.

Ms. Gigantes: I was going to say March 31. I just changed June to March to make it simple.

Mr. Baetz: Oh, I see.

 $\underline{\text{Ms. Gigantes}}$ : If you want it to be March 31 I can make a motion to that effect, but I think March 30 might do.

Mr. Baetz: Oh, yes; I am easy.

Ms. Gigantes: If they slipped by one day I am sure nobody would comment.

Mr. Baetz: If you want to make it June 31, that is okay.

Mr. Ward: The suggestion was February 29.

Ms. Gigantes: Yes, well, he just suggested June 31.

Ms. Caplan: Okay, what is the agenda?

Ms. Gigantes: It is changed from June to March.

Mr. Chairman: Will you agree to put that in your amendment?

Ms. Caplan: I accept it, yes.

Mr. Chairman: Because this whole thing is your amendment.

Ms. Caplan: March 31, sure; the end of the month.

Mr. Baetz: And every chief administrative officer for the next 100 years will say, "How come I have to report for March instead of June?"

Ms. Caplan: Do you want to move that we also send them a copy of this Hansard so they will know why?

Mr. Chairman: Yes, along with Ms. Gigantes's address.

Ms. Gigantes: And my telephone number.

Mr. Chairman: Shall the amendment now carry? Carried.

Motion agreed to.

Mr. Chairman: Ms. Gigantes, we will go back to your addition to section 32a. Is that not where you wanted this put? I see what you are doing. You are numbering additional subsections, I gather.

Ms. Gigantes: I am not quite sure of the numbering here, because we seem to move from subsection 5 with our amendments to subsection 7. It is not the way I usually count.

Mr. Chairman: Shall we read them as subsections 6 and 7, for the purposes of what we are doing?

Ms. Gigantes: Yes.

- Mr. Chairman: Ms. Gigantes moves that subsection 32a of the bill, as set out in the government motion, be amended by adding thereto the following subsections:
- "(6) In the case of an establishment where there is no appropriate male job class with which to compare the compensation in a female job class, the hearings tribunal, upon the application of the employer, an employee, a group of employees or the bargaining agent representing an employee or group of employees shall determine the basis on which comparisons are to be made and the pay equity plan for the establishment shall be implemented on the basis of the determination.
- "(7) For the purposes of subsection (6), there is no appropriate male job class unless there is a male job class in the establishment that performs work of equal or comparable value, or that has a higher job rate, but performs work of lower value than the female job class that is the subject of the comparison."
- Ms. Gigantes: There are obviously two principles that are raised in our amendment that are different from the government amendment. The first is spoken to in proposed subsection 32a(6), and it has to do with the fact that we believe the commission should be given both the responsibility and the authority to study the situation of work places where there are no, or few, male incumbents in positions and determine how these work places should be treated when it is very difficult to provide an appropriate comparable male job class for female job classes.

## 1510

That is different from the government amendment, which suggests the Pay Equity Commission should only undertake studies and make reports and recommendations to the minister within a year about how to provide the application of this legislation to such work places. Here, we are talking about day care establishments, either private or public; we are talking about

nursing homes; we are talking about extended care homes; we are talking about libraries; we are talking about establishments in which almost all or all of the employees are female, have traditionally been female and may always be female; we do not know.

In some of those situations it will be easy to make a determination of how to compare jobs and provide pay equity under the legislation. For example, in a regional municipality day care establishment, if there are no males employed, it will be possible to provide a comparison with other regional workers, with other male-job-class workers of the regional municipality. That will not be true in many establishments where almost all or all the employees are female.

We do not feel it is enough that the commission should be asked to study and make recommendations. We would like to see the commission, within a year, provide the comparisons that will be the basis of plans which will begin providing equal pay adjustments within two years in public sector establishments and, further on down the road, in private sector establishments.

Mr. Baetz: I am looking forward to the parliamentary assistant's comments on this.

Mr. Ward: Frankly, it is an issue that all three parties spoke to during the course of the second reading debate in that, in those instances such as the day care centres where there is no ability to make comparisons to get a pay equity adjustment made, there will be some attempt during the course of the legislation to arrive at some way of addressing this issue. The proposal by the third party that is before you sets out an obligation on the part of the commission to find and enact a solution to it and virtually gives it a carte blanche responsibility to do so.

If I may speak to our amendment as well as to yours, I believe our amendment sets out an obligation on the part of the commission to report back within a period of one year with its recommendations in terms of how the problem can be solved. From there, it remains for the government to act on those regulations. If there is a substantive difference, it is that yours is virtually a carte blanche approval to go ahead and look at the problem, determine the solution and enact that solution. What we are saying is: "Look at the problem; determine a solution, but it is for government to enact that solution." We have put a time frame on it. Really, that is the crux of the difference.

Mr. Baetz: The parliamentary assistant has said it perhaps even better than I was going to say it. I really think your subsection 32a(6) is turning over the role of the legislators to the commission. I am just amazed it is here.

Mr. Charlton: To put it as simply as I can, our proposed subsection 6 is merely asking that the commission make the same decision in the case of these female job ghettos where there is no male comparable as the commission is going to make for all other pay equity plans, the final decision.

Mr. Chairman: On somewhat different grounds though. You would have to admit that. You do not have quite a level playing field.

 $\underline{\text{Mr. Charlton}}$ : They are going to use the same criteria as is in the legislation.

Mr. Ward: We could really go on at this, but I think you would have to concede that the mechanisms are not in place in the act for these workers. Going down the criteria, the mechanisms are not there. That is the whole point. You are going to have to find new mechanisms.

Ms. Gigantes: In my first statement about this I suggested that there are mechanisms within the bill which will be appropriate and provide for some establishments which are what we call female ghettos to have adjustments made or plans created under this legislation. That is the situation where, for example, the regional municipality has day care centres and if there is no appropriate—and I want to go into this a bit in a moment—male comparable within the day care setting, then this legislation lays out the mechanisms so that comparability will be established among other job classes in the regional municipality.

In other words, you will go outside the day care, specifically as an establishment or as a work place and compare in the establishment which in this case will be the regional municipality what other job class occupied to the extent of 70 per cent by men would be most comparable, and compare the wage rates on that basis.

That will be happening. Public sector employers will be doing those comparisons within the first year or year and a half of the time frame of this legislation, a year to a year and a half after the legislation is proclaimed.

What we are saying is that at the same time the commission should have the responsibility and obviously the commission would look into what is happening in regional municipal day cares and the comparisons that go on there for practical kinds of demonstrations of how comparability can be achieved for day cares that are isolated as either community co-op, non-profit day cares privately owned, whether they are profit or non-profit, and those which are municipally or regionally operated.

The same would be true for libraries and extended care facilities. It is not as if the commission would be acting (1) outside of any of the steps in this legislation or (2) without any groundwork being done by other employers. They could examine and use for purposes of making determinations.

Second, I would like to come back to the point of the government amendment. It simply says that in establishments where there are no male job classes and in most female ghettos like nursing homes or day care centres, you are going to find one, maybe two jobs are being carried out by men.

Mr. Ward: Job classes.

Ms. Gigantes: Job classes, right. One person can make a job class. The cleaner in a day care is a job class. Is it an appropriate comparison? Not in my view. The role of the cleaner has different skill, effort, responsibility and working conditions, perhaps the same working conditions, but different skill, effort and responsibility from the role of the day care provider.

If you simply say that we are going to have an examination of situations where there are no male job classes, I do not know how many of those situations you are actually going to find. You have to talk about something more than "no male job class"; you have got to say "no appropriate male job class," which we have offered in our amendment, and you have then to define what you consider appropriate in a female job ghetto.

## 1520

Mr. Baetz: I think we could debate this subject all afternoon and all day tomorrow and come up with the same conclusion. I simply cannot help but be convinced that this subsection 6 would give over to the hearings tribunal the powers and authority that should rest with the legislators.

I think the government amendment is far more appropriate in that it deals with a problem. We know there is a problem where there are no comparisons available, but then it says in a year, or whatever time it is here in the government amendment, you shall recommend to government. Maybe the legislation will be amended at that point in time; but I cannot see us turning this kind of sweeping authority over to the hearings tribunal.

Ms. Gigantes: I am going to propose another amendment when this one fails.

Mr. Chairman: Do you want to take subsections 6 and 7 together?

Ms. Gigantes: No, subsection 6 first, please.

Mr. Chairman: Shall subsection 6 carry?

Opposed?

Motion negatived.

Mr. Chairman: Ms. Gigantes moves to amend government motion 32a(2)(e) in the following way: To insert on the fourth line of clause (e) "establishments that have no appropriate male job classes."

Mr. Baetz: The minute you say "appropriate" you raise the question of what is inappropriate.

Ms. Gigantes: That is what we will define by our next amendment; it is subsection 7.

Mr. Revell: I think the idea of the motion--maybe we could vote on it in principle and then, if it passes, do the drafting and come back later in the afternoon with something. I think the idea can be expressly stated in the idea "for work performed in establishments where there is a female job class but no male job class with which to make a comparison." I think that is the idea that you are getting at, Ms. Gigantes.

 $\underline{\text{Ms. Gigantes:}}$  Why do we not say "no appropriate male job class with which to make a comparison"?

Ms. Caplan: In speaking to this, I think that, as was in the original motion on this one and the minister's statement in the House, the intention of the government is to give the Pay Equity Commission the mandate to thoroughly review and canvas this issue and make recommendations as expeditiously as possible.

In this amendment it has been specified that this is not only the intent but also that within a deadline of one year, and the expectation is that the problem has been defined, and without limiting the parameters, to say to the commission, "Please make recommendations on this issue." Mr. Charlton: Your motion is limiting the parameters.

Ms. Caplan: I do not think it limits it at all. I think we are talking about all-female establishments where there are no male comparables.

Mr. Charlton: It does not say that, it says "no male".

Ms. Caplan: That is the intent of the motion.

Ms. Gigantes: It says "no male job classes".

Ms. Caplan: "No male job classes."

Ms. Gigantes: There may be one man. He may be the caretaker in the day care centre.

Ms. Caplan: I think that the commission will respond if that is what it finds and then the minister will again bring forward the conclusions and recommendations, and it will have an impact on the recommendations. I think we are nitpicking on something which is clear and should not be a problem because the intention is clear as to what problem we are looking to correct and define. It is just a question of having the studies done, having the recommendations made and then the government taking the action required.

Mr. Chairman: Ms. Gigantes, you had your hand up.

Ms. Gigantes: I did. I found that statement really hard to swallow. If your thesis is correct and what the government intends is to have the commission have a mandate to study all that is required here, then why the devil would you be afraid of saying, "no appropriate male job classes with which to make a comparison"? That really opens it much better as far as the work of the commission would be involved. If you just say, "no male job classes," then the commission is going to have to hem and haw and seek permission and maybe be told two months from now that, "if there is one man in there cleaning the day care, that is the only concern you can have in carrying out your studies." I do not want to see that.

Ms. Caplan: I would refer you back to the statement that the minister made in the House when the bill was tabled.

Ms. Gigantes: The minister has made lots of statements. Some of them are supportable, some of them are believable, and some of them are not. We are dealing with the legislation.

Ms. Caplan: Do you want to hold it down, or do you want to just vote? We do not see any problem.

Mr. Chairman: I do not think there is a strong reason for doing anything other than that. Is there any further comment?

Ms. Gigantes: Could I ask the parliamentary assistant to listen once more to the proposed wording here? Can I get a new draft with the proposed wording?

Mr. Revell: I would like to suggest that in the light of the fact that we wanted to keep the motion that you moved to subsection 7 as well, that we use the following: that we strike out the words "that have no male job classes" in the fourth and fifth lines and insert in lieu thereof "in which

there is no appropriate male job class with which to compare the compensation of a female job class."

Ms. Gigantes: Good.

Mr. Barlow: Mr. Chairman, what would be appropriate?

Mr. Chairman: That was Mr. Baetz's earlier question.

Ms. Gigantes: Could you take a look at what is written under your nose for a suggested definition of "appropriate"? That is on our amendment and it is now renumbered to read subsection 7.

Mr. Ward: In terms of the issue, what do you achieve that you do not achieve with the amendment as it is written?

 $\underline{\text{Ms. Gigantes}}$ : What you achieve is that you say to the commission from the start, "We do not want you to take a look at a day care and say: 'There is a job class that is male. There is one occupant. There is 100 per cent male incumbency.'"

Mr. Ward: Given that the commission's function here is to study the issue and to make a recommendation, what have you achieved that is different in terms of that mandate?

Ms. Gigantes: What we are saying to the commission if we pass your recommendation is that there is a job class in the day care that is 100 per cent filled by men. It has one man. If you are going to do a comparison in the day care, tell us how we are going to compare the day care providers to the cleaner, who is male.

Ms. Caplan: That is not what it says.

Ms. Gigantes: Yes, because that is one male job class, is it not? It would be under your definition.

Mr. Ward: That is a male job class. You are saying that ours limits it to only those where there is no male job class. They are going to do the study and make the recommendations—different care centre or whatever. How is what you achieve different? You made the recommendations and you have done the study and you have canvassed the issue and then it remains for the government to put in place whatever is necessary in terms of a solution.

 $\underline{\text{Ms. Gigantes:}}$  We are not satisfied with whatever the government may decide.

Mr. Ward: We will stand it down if you want. We will look at it, but I really question what is being achieved that is any different.

Mr. Chairman: Do you want to vote on it or stand it down?

 $\underline{\text{Ms. Gigantes:}}$  If the parliamentary assistant is willing to stand it down,  $\overline{\text{I}}$  am willing to wait to have that further consideration.

Mr. Chairman: Okay, stand it down. I want to clear up a matter with respect to an earlier NDP motion or amendment to a section that may require some further clarification. Could you ask legislative counsel if we are in order with that now?

Ms. Gigantes had a section 32a. I want to clarify that section. It was substituting, I believe, for section 28.

### 1530

Ms. Gigantes: Yes, clause 28(2)(e).

Interjection.

Ms. Gigantes: I beg your pardon?

Mr. Chairman: If you will hold, I will have legislative counsel make a comment, I believe, on this one just to make sure that we are in order with it.

Mr. Revell: Ms. Gigantes, you had a motion originally in your package, page 84, clause 28(2)(e). It was stood down when we were considering it because it was considered to be more appropriate that it be dealt with as part of section 32a, which is now on the table. When I was out of the room we passed by clause 32a(2)(a) which is "may conduct research" whereas yours is "shall conduct research." We have no idea whether you wanted to raise that issue at the present time. Section 32a, of course, has been passed. It would require unanimous consent to open up that aspect of whether it should be "shall" or "may." There is another part of your subsection, though, which is different and not included necessarily, which is the "consultative services."

Ms. Gigantes: That is right, yes. Exactly. I had forgotten to raise that again. I had indicated--

Mr. Chairman: Could I try to be helpful? In the light of the fact that it was an honest oversight on the part of the third party, do I have unanimous consent to reopen?

Agreed to.

Ms. Gigantes: Mr. Chairman, I cannot find it now, because it had been stood down. Do you have a copy of it?

Interjection.

Ms. Gigantes: No, that is not it; we amended that one.

Ms. Caplan: No, you said you did not want this one dealt with under 28(2)(e) but you would rather discuss it under section 32a.

Ms. Gigantes: We did amend that. Ah, yes, okay.

Mr. Chairman: Ms. Gigantes moves the addition to subsection 32a(2) of the words, "may provide consultative services to employers, employees and bargaining agents."

Ms. Gigantes: "May provide consultative services to employers, employees and bargaining agents."

<u>Ms. Caplan</u>: The question that I would ask of staff from my reading of this was if that was covered under clause 32a(2)(b) where it said "may conduct public education programs concerning any aspect of pay equity and related subjects." Clause 32a(2)(b) also talked about conducting research and

producing papers "concerning any aspect of pay equity." That seems to me to be very broad and general, and since the intention of the public education exercise was to offer assistance to employers, employees and bargaining agents, my question is whether the amendment as printed on the government motion would cover that aspect of what Ms. Gigantes is looking to cover.

Ms. Gigantes: Ms. Caplan will recall that we had some discussion earlier about how an employee is supposed to know that the Statutory Powers Procedure Act is one to which application can be made, so the employee can make sure there is enforcement and that certain processes are followed, in a legal sense. I think that is a bit more specific and directed toward a particular group of persons than what I would understand from "public education program" or research studies and so on. If it seems to fit within the general intent of the government idea of how the Pay Equity Office should be operating, I think it would be a very simple matter to add in that consultative nature of the service that can be provided. The same is true for employers.

Ms. Caplan: My question was whether that was covered in the section as it is now standing, and whether questions of information can be provided under the act as it is written.

Ms. Herman: I think the intent when we talked about and included public education was, in the very broad sense, to provide information to all parties about pay equity, the act, its enforcement and so forth. One of the questions I would ask about the term "consultative services" concerns the danger of the office getting into actually advising employers on how to do it in the sense that it is also the body receiving the complaints and investigating them.

To that extent, it has to remain neutral and be able to receive complaints about particular plans; therefore, it cannot get involved in specifically telling an employer, "If you do it this way and follow this plan, purchase that plan or go to this consultant or whatever, you will have a plan that is okay," because then an employee's right to file a complaint about that plan may be prejudiced.

Ms. Gigantes: Yes, I understand what you are saying. I wonder if somebody can assist me then to find a phrase to cover what I am looking for. I am looking for the office to provide assistance to particular groups of individuals, the employer and the employee, on how this act works. I do not think that is covered under public education programs. You can define a public education program the way you want to, but I look upon it as an information program that is very general in nature.

I think there will be cases in which there will be specific pieces of guidance that people will want and should seek from the office without creating the kind of problem you are suggesting, which is a possibility without that phraseology. It should be available to them there.

Ms. Marlatt: The intention was to provide public education on how the bill works and how pay equity, in a general term, can be implemented. My hesitation about consultative services is that they would not come in and act as consultants in the development of a plan, but if public education and information programs--

Ms. Gigantes: My conception of that is broad-based public information programs. Perhaps what we should be doing--legislative counsel

might give us advice here—is looking to clause 32a(2)(b), which we have unfortunately already passed, to say something like, "may conduct public education programs and provide guidance." I do not want people to have to go and get lawyers. I would like the Pay Equity Office to be able to give them guidance about how to make this act useful for them.

Could I leave that? As a suggestion, perhaps we could have some other head take a look at it overnight. It is not a big matter, but it seems to be an important matter.

Mr. Chairman: Are you agreeing to stand it down?

Interjection: There is a request to stand it down.

Mr. Chairman: I am getting an inference that that is what she wants to do.

Ms. Gigantes: Yes.

Mr. Chairman: The request is that you want to stand it down. It is on the floor for the purpose of being voted on. We can take a vote if there is not unanimous agreement to stand it down. Standing it down means that it will come back tomorrow. There is no other time for it to come back, and I need not tell you that we are shortly getting into a time frame.

Mr. Ward: There are three and a half hours left on this.

Mr. Baetz: Mr. Chairman, if we do stand it down, I do not know who is going to look at this thing overnight to avoid a long debate tomorrow. I must say that there is just one thing that concerns me a little about Ms. Gigantes's observations on this. Somewhere in all this--and I do not like the word "consultant," which means all things to all people--I did understand that we would be providing the employers and the employees with some kind of help as to how to make this thing work. Now, where and how does that happen?

Ms. Caplan: I think the intent is there in the words "concerning any aspect of pay equity and related subjects." That is so broad that the office would be able to give advice and offer assistance so people understand the act.

Mr. Baetz: Maybe if we do stand it down and, to further that, make it a little more specific what public education entails--

Ms. Caplan: He may have a suggestion now.

Mr. Baetz: Maybe he has it now.

Mr. Ward: Maybe this does not go as far as those who are debating this want it to. Anyway, under clause (b): "may conduct public education programs and provide information concerning any aspect of pay equity and related subjects."

Mr. Baetz: That would assume to employers and employees, not just to the general public.

Mr. Ward: Will that do?

Ms. Gigantes: Yes.

Mr. Ward: Shall we vote on it?

Ms. Gigantes: Sure.

Mr. Baetz: Let us vote on it.

Mr. Chairman: Let me be sure we have that. This is an amendment to the government's original motion. You are, therefore, agreeing to withdraw your amendment. All right. Let us make sure the record shows that the NDP amendment has been withdrawn and the substitute wording has been read into the record by the parliamentary assistant.

Is it clear to legislative counsel what we are doing?

Ms. Schuh: Yes.

Mr. Chairman: Is it clear to the members of the committee?

Ms. Gigantes: Yes.

Mr. Chairman: All in favour of the amendment?

Motion agreed to.

Mr. Chairman: We will take a break--a short one because we have a lot of work to do--for those who wish to have a slight moment apart from their chairs.

The committee recessed at 3:41 p.m.

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Mr. Chairman: We have agreement from all parties with respect to the proposed amendments by Ms. Gigantes and the parliamentary assistant indicates that he will be able to report back with respect to those proposals tomorrow. There is agreement to stand down the amendments which means that we can continue with section 33 at this point. We will start from there and leave section 32 for finalization tomorrow.

Ms. Caplan: We have dealt with section 33 and we are at 34.

Mr. Chairman: Was section 33 dealt with?

Clerk of the Committee: We have not touched it.

Ms. Caplan: Yes, we did.

Clerk of the Committee: Oh, that is when I was photocopying.

Ms. Caplan: It is just a final vote.

Mr. Chairman: We need a final vote on section 33, as amended.

Ms. Caplan: Yes.

Mr. Chairman: Shall section 33, as amended, carry? Carried.

Section 33, as amended, agreed to.

On section 34:

Ms. Caplan: I have an amendment to subsection 34(3).

Mr. Chairman: Let us start with subsection 34(1). May I ask, Mr. Baetz, did you in fact withdraw your amendment?

Mr. Baetz: Yes, I did.

Mr. Chairman: It is gone then. I do not have any amendments on subsection 34(1). Shall 34(1) carry? Carried.

There are no amendments to subsection 34(2). Shall 34(2) carry? Carried.

I have a government amendment to subsection 34(3).

Ms. Caplan moves that the French version of subsection 34(3) of the bill be amended by striking out "le logement" in the last line and inserting in lieu thereof "cet endroit".

Are there any comments of substance that anyone would like to make with respect to the amendment? If not, I will call for subsection 34(3).

Motion agreed to.

Mr. Chairman: Subsection 34(4)? Carried. Subsection 34(5)? Carried. Subsection 34(6)? Carried. Subsection 34(7)? Carried.

Shall section 34, as amended, carry? Carried.

Section 34, as amended, agreed to.

On section 35:

Ms. Gigantes: I do not know if you would want to have the government motions dealt with first procedurally. I guess one of them is relevant and two others are not. Are you withdrawing the mandatory posting date amendments?

Mr. Ward: No.

Mr. Chairman: Ms. Caplan, do you want to move the amendment with respect to the name change?

Ms. Caplan moves that clause 35(g) of the bill be amended by striking out "commission" where it appears and inserting in lieu thereof in each instance "hearings tribunal."

Do you want to pass 35(g) then? Shall the amendment carry?

Ms. Gigantes:: The amendment?

Mr. Chairman: Yes, just the amendment at this point. That is carried.

Motion agreed to.

Mr. Chairman: Okay, now we will go back to section 35 in general.

Ms. Gigantes: I can understand why the Lieutenant Governor in

Council should be able to make regulations prescribing forms and notices and providing for their use, but I do not understand any of the other clauses and why these things should be left over to matters of regulation. It seems to me they should all be within the powers of the Pay Equity Commission.

Take for example, the methods for determining the historical incumbency of a job class. When the commission has a hearings tribunal within it that is going to make decisions, what is there left for a government regulation to determine about the historical incumbency of a job class? Or take clause (c). We have set out what female job classes are, and in some cases they can be appealed to the hearings tribunal for determination, so what is there left for the Lieutenant Governor in Council to do?

I do not understand any of this stuff. If you have a hearings tribunal, it will make decisions. Those decisions will form the precedents, and away we go. It seems to me we are leaving open the potential that there is going to be conflict between government making regulations in one of these areas and the predetermination of matters by the hearings tribunal.

Mr. Ward: I believe there is a responsibility in the obligation for the Lieutenant Governor in Council to prescribe criteria, rather than just a carte blanche.

Ms. Gigantes: Criteria like what? Give me an example, if you would be so kind, under 35(c): "Prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class."

Mr. Ward: I was hoping you were going to ask me about 35(b), but you want (c).

Ms. Gigantes: We know what those are under the legislation, and when there is a doubt, there is application through subsection 1(4). Is that not the subsection that deals with historical incumbency? The determination is going to be made by the tribunal. Why is there any need for regulations?

Ms. Marlatt: I think when it is regulations—there is a difference between a case law establishing it and where there might be some policy that government has determined which would outline some of the criteria that the employer, the review officer and the commission would take into account. A lot of people are trying to decide on when a female job class is male and when it is female. So the employer, the bargaining agent, the review officer and the tribunal all have that. There may be some policy criteria which would set a framework in which they would operate, and if that is the case, then the government would pass regulations.

Ms. Gigantes: Can you give me an example? It seems to me--without repeating myself, I hope--that everything from (d) through (h) really applies to matters which are legislatively explicit in this legislation or which can be heard by the tribunal.

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Ms. Herman: If I could give one example, one of the criteria under subsection 1(4) is "gender stereotypes of fields of work." It may be that it would be helpful, after a certain amount of time, for a list to be made of jobs which, because of their nature, are classified as gender stereotypes of fields of work, so that, each time that job came up, one did not have to go

through an argument as to whether it was a female job class or male job class because of the gender stereotype of field of work. One could perhaps come up with a list of jobs.

Ms. Gigantes: Without going through a hearing. I cannot say I am very pleased that all the work we have gone through in deciding on the wording of this legislation is now open to prescription and change by means of clauses 35(b) through (h). It also seems to me that the possibility exists that this independent hearings tribunal is somehow going to be dictated to by regulation, as opposed to a change in the legislation it is called upon to enforce. I do not like it.

Mr. Ward: By prescribing criteria, and throughout the whole process of the regulations, it would seem to me that in the absence of the ability to do that, you leave every issue to be decided by almost some sort of litigated process. You can set out on the basis of the decisions that have been made by the commission over a course of time, and I do not see that there is anything unusual or extraordinary about the permissive nature of the regulations section of this bill compared with any other.

Ms. Gigantes: Well, I do.

Mr. Ward: I do not agree.

Ms. Gigantes: We have already gone through enormous discussion of what we mean by all these matters within the body of the legislation, and then we are saying, when there is a determination to be made, it shall be made by a tribunal. Then you essentially say to us, "Now we are going to set out the ways in which the tribunal shall make interpretation."

Mr. Ward: If I can use clause (e) as an example, there is a reference to prescribing criteria that can be taken into account in terms of the determination: the skill, effort and responsibility, and working conditions. If you just think back to the examples we had in terms of the one concrete evaluation that was brought in, I think you will recognize that it is quite undefined.

Ms. Gigantes: I am sorry, but the more we talk about this, the less happy  $\overline{I}$  am with clauses 35(b) through (h) and the less reason  $\overline{I}$  see for approving them.  $\overline{I}$  will be voting against them.

Mr. Baetz: I must say that I have the same problem with clause (c), as an example, where it says "prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class." It seems to me that much of the bill is doing exactly that, is it not? We have spelled out in the bill, in various ways, how one defines a male job class and a female job class. Maybe legal counsel can be of some help to us. Is there somewhere that regulations automatically have to work within the parameters of the legislation? If that is not the case, then it seems to me that under clause (c) we are just giving--

Mr. Chairman: I have asked legal counsel fundamentally the same question you have now raised and perhaps the response I was getting can be shared with the members of the committee.

Mr. Revell: Starting with clause (c), since it is the one that is immediately on the table, I suggest that this one does not give a power to rewrite the bill. Assuming subsection 1(4) passes, that provision provides

that, "In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of work and such other criteria as may be prescribed by the regulations."

In other words, it is probably a broadening thing. These are additional things that you shall determine as to whether or not this is a male job class or a female job class. It could perhaps be used to narrow down; I am not positively sure.

The problem with not having these kinds of powers is that you are going to end up with a case-by-case evolution of the law. For example, taking a look at clause (d), "prescribing the method of valuing any form of compensation," anybody who has ever been involved personally or who has a friend who has been involved with a company-supplied car knows that the Income Tax Act determines the value of that car for you. That may not necessarily be the way. If you do not have a provision that allows for regulation-making powers to determine some of these kinds of issues, the tribunal is going to have a difficult time with what does constitute the value of an automobile.

There are other kinds of compensation that are in much the same sort of category, golf club memberships and that sort of privilege that is extended to some employees. That is one category.

With respect to "prescribing methods for determining the historical incumbency of a job class," that is a pure policy issue, I submit, and as to whether it is a good or a bad thing, this is something that is brand new. I submit there is no guidance for a court anywhere to determine how you determine the historical incumbency of a job class.

Ms. Gigantes: We set up a tribunal for precisely those purposes, to take account of what experience exists, which the tribunal can draw upon in the real world of Ontario, and make a determination and have that be the way it operates.

The way we are looking at this, if I could suggest to you, it is quite possible for a tribunal, having made a decision, to set its own working guidelines about what is going to constitute the appropriate way of approaching historical incumbency, female job class determination, you name it, under clauses (b) to (h). The thing that worries me, looking at this, is that it seems to me quite unusual when what we are talking about is valuation all through this legislation. This is about valuation and comparability of valuation.

We are saying we are setting up this legislation so that it describes how valuation shall occur, and comparability of valuation, and then we are saying there shall be a hearings tribunal that will make the determinations and set the case precedents and build up some working guidelines on those things, as far as I am concerned. On the other hand, we say here is a whole way that the government can sit down and play around with these concepts and set up guidelines. That may work out well; it may not.

I would prefer to leave that to the determination of the hearings tribunal itself, making its own guidelines. I do not want to see a kind of prescription that you could put on a computer, formulated by government, perhaps changed at one point when there is political pressure around something and changed at another point when there is political pressure on something else without the kind of discussion that we get into legislatively.

Mr. Ward: So you want totally to remove any recourse other than the legislative, knowing full well it works both ways?

Ms. Gigantes: If we are going to have an independent hearings tribunal.

Mr. Baetz: I have sort of a gnawing feeling that one reason these regulations appear as they have here is not only because we are on a pioneer path here going into new territory but also because of the enormous complexity and difficulty in trying to do what we are trying to do through legislation. I think this is--

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Mr. Barlow: It is an escape clause for the government.

Mr. Baetz: I am not quite that cynical.

Mr. Barlow: Okay, I take it back.

Mr. Baetz: You have said that you have to have these regulations here in order to have the bill operative. I can think of a lot of other legislation where--and sure you need regulations for the fine-tuning--you do not give the regulations these sweeping powers that are intended to be given here under this legislation.

Maybe the reason is that whoever drafted it said, "My God, you know, we have written rules in many parts in the bill here but we still cannot really carry out this thing unless we give enormous powers to the Lieutenant Governor in Council through the regulations to make it work." Maybe they are such sweeping powers that they raise concerns that have been expressed by Ms. Gigantes. I imagine they would raise concerns in the minds of a heck of a lot of legislators who would say, "We have a piece of legislation here, but really the guts of it are going to be carried forward under the regulations."

Mr. Ward: So you leave all these powers solely in the hands of an appointed body.

Ms. Gigantes: That is what our objections are. That is how our court system works. If you have a hearings tribunal, that is what one expects a hearings tribunal to do, to make the decisions within the framework of the law.

Mr. Ward: Just as long as we fully recognize that it is on a case-by-case basis.

Ms. Gigantes: Let me tell you how I see that working. The tribunal will make decisions in a series of cases that, within a period, will constitute a framework of decision-making on which guidelines can be based. You can bet that the Pay Equity Office and the review officers in the Pay Equity Office will be using those decisions as guidelines. What worries me here is that we have gone to a lot of trouble--I have said it before; I will not say it again. Do you understand my concern?

Mr. Ward: Yes.

Ms. Gigantes: Okay.

Mr. Ward: Do you understand mine?

Ms. Gigantes: Yes, I think I do. I think, though, that when you say there is no other way of doing it, that is not how I see it.

Mr. Ward: What is the other way?

Ms. Gigantes: The other way of doing it is that the independent hearings tribunal is mandated to make decisions on questions that arise out of this legislation. Those positions become a series of precedents. The precedents, in effect, become a framework, either specified or unspecified, of guidelines for the review officers to make determinations in the first round of complaint.

Mr. Ward: Let us not forget that the whole principle behind the regulatory framework is that it is a representative body that can look at this and say, "Maybe we should prescribe some criteria because we are getting inconsistent decisions or whatever."

Ms. Gigantes: Well, when you have that problem you could do with it--

Mr. Ward: Really what you are saying, Ms. Gigantes, is that this is strictly in the hands of a body appointed by the Lieutenant Governor in Council and that there is no recourse other than going through a complete act of the Legislature.

Ms. Gigantes: Salva me, salva me. No, that is not what I mean at all.

There are three ways. If you find, as a government or as a Legislature, that decisions being made by a hearings tribunal are unsatisfactory, the way to deal with that is to change the legislation, which means it has to come back to the accountable body, which is the Legislature.

Mr. Ward: It took only two years to get this far.

Ms. Gigantes: If I give you the power in government to make regulations, you do not have to consult the Legislature about that at all. That is what concerns me. You are suggesting that there is no other way of having accountability or a framework in which the operative decisions of the ongoing work of the commission can be carried out, and that is not true.

Mr. Ward: There is another way, I suppose; the Pay Equity Act of 1989 or whenever; 1991.

Ms. Gigantes: No. If you have a problem with female job class and you may well, I am sure the Legislature will be open to discussing it.

Mr. Barlow: I wonder whether we should not stand this down. I tend to agree largely with Ms. Gigantes on this matter. I would like to have some time and perhaps even the parliamentary assistant might like to have some time to think about some of the arguments Ms. Gigantes, in particular, has made. I would like to think about it overnight because it is a pretty important decision to make.

Mr. Chairman: It is certainly no precedent for this committee to stand something down until tomorrow. We have got--

Mr. Barlow: I know we cannot say that tomorrow. We have to make the decision tomorrow.

Mr. Chairman: I think we all appreciate that.

Ms. Caplan: Before we stand down, the only point I would make, and I think Mr. Baetz made a very good point, is that this is a historic and landmark piece of legislation. We have said all the way through these hearings—we have heard from representatives and deputations—that there is a potential for, I think one of the groups used the word "wrinkles," that could be ironed out based on experience.

If you do not have the ability to iron out some of the wrinkles by clarification or creation of lists or something through regulation, what it means is that each time you identify something like that you must reopen the whole bill and, given the legislative process, I suggest hamstring the process for getting on with it, because while that is going on the Pay Equity Commission is either operating or put on hold while this is then dealt with.

It would seem to me there is the ability in the Legislature to question the workings of it. There is the estimates process. All that is reviewed. The regulations are there for questioning. To come into a historic piece of legislation without the ability to define criteria, regulations based on experience—if you leave it to a case—by—case analysis, it could work either way. You could end up with something where you will be sorry you have hamstrung the Pay Equity Commission or frustrated the employer or the employees because an expectation has been raised. Simply because the ability to smooth it out by regulation is not there, you have created a situation that is worse than allowing the regulations to go forward, given the fact that through the estimates process and the legislative process, all that is open to review at any time during question period. I do not see the problem.

Mr. Baetz: Can I ask legislative counsel a question? I do not intend to put you on the spot even if I might, but I do not think I will. I hope not; it is not intentional anyway. Is it your impression that the regulations as set out here provide considerably more and sweeping powers, or encompass more, are written in more general terms, than regulations normally are written in legislation or accompanying legislation?

Mr. Revell: I feel like I am on the spot.

Mr. Baetz: Maybe it is inappropriate to ask the legislative counsel, but I would like to get some authority some place to give me--I am not a lawyer--some comforting comments that these regulations really are not all that different from the kind of regulations we get with other legislation. I have the impression they are, but I may be wrong.

Mr. Revell: I cannot give a brief answer to that. In terms of regulatory history in the past 75 years in countries that follow the Westminster model, as our parliament does, it is safe to say that more and more pieces of legislation have wider and wider regulation-making powers. This is not something that is on the spot because I have written a paper on that very subject.

Interjections.

Mr. Revell: I came to that opinion a long time ago, and there are respected writers who have written on this subject and they have the same conclusions. I think, Mr. Baetz, these are the kinds of powers that have been suggested. There are other ways of controlling these kinds of powers. I think Mr. Ward is suggesting the section be stood down until tomorrow.

Mr. Baetz: Time to review the paper you wrote.

Mr. Barlow: Bring copies of the result with you.

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Mr. Chairman: Do we have agreement to stand it down until tomorrow? The parliamentary assistant has to leave for a few minutes. We can carry on, if you like. If a matter relates to the parliamentary assistant, we will just have to recess for a moment until he returns. We are standing down all of section 35. Is that understood and agreed?

Ms. Gigantes: That is right. We have finished with the amendment to clause  $\overline{35(g)}$ .

Mr. Chairman: No, we have not; all we did was amend it. I have not passed it yet.

Ms. Gigantes: That is right.

Mr. Chairman: I have passed nothing in section 35.

Section 35 stood down.

On section 36:

Mr. Chairman: Do you want to deal with section 36, the seven-year review period.

Ms. Gigantes: Yes.

Mr. Chairman: On subsection 36(1), is there any comment on the comprehensive review of the act seven years after the effective date? Shall that carry?

Carried.

Subsection 36(2), "report to the minister"?

Carried.

Subsection 36(3)?

Carried.

Mr. Revell: On the motion that is in the government motions book with respect to section 36a, both references to the commission—there is one in subsection 1 and one in subsection 2—should read in this case, "the Pay Equity Office," which is the side of the office responsible for this sort of issue.

Interjection: That is covered in section 32a.

Ms. Caplan: We are withdrawing the amendment to section 36a.

Mr. Chairman: To both subsections 1 and 2?

Ms. Caplan: Yes.

Mr. Chairman: Then there will not be a section 36a.

Ms. Caplan: Do you want to do the whole of section 36? Since you did the subsections individually, you do not have to do the whole clause.

Mr. Chairman: There were no amendments. We have done them all individually. Just to cover it so that there is no misunderstanding, shall section 36 carry?

Section 36 agreed to.

On section 37:

Mr. Chairman: Ms. Caplan moves that section 37 of the bill be amended by striking out "1987" in the third line and inserting in lieu thereof "1988."

Ms. Gigantes: Is this in order, or is it retroactive legislation?

Ms. Caplan: It was moved by the Attorney General when he was here.

Mr. Chairman: I think Ms. Gigantes is aware of that. Is there any question with respect to the amendment's change of date? Shall the amendment to section 37 carry?

Motion agreed to.

Mr. Chairman: Shall section 37, as amended, carry?

Mr. Baetz: What is this one on?

Mr. Chairman: I will call that vote again.

Ms. Caplan: Section 37, "The moneys required for the purposes...out of the consolidated revenue fund...." It changes the date.

 $\underline{\text{Ms. Gigantes:}}$  It is because we have been slow in getting to the matter.

Mr. Baetz: Could we stand that down for a moment?

Mr. Barlow: We have an amendment by way of addition.

Ms. Caplan: That is the money bill provision.

Mr. Chairman: It is the money bill provision.

Mr. Barlow: That is right.

Mr. Baetz: We understand the chairman is already getting antsy.

Mr. Chairman: I am just very nervous whenever you talk about government money.

Mr. Baetz: I will try it anyway.

Mr. Chairman: Go right ahead. I cannot rule it out of order until I have heard it. Has it been it circulated to the members of the committee?

 $\underline{\text{Mr. Baetz:}}$  It has not yet been. Has this one been circulated, section 37?

Mr. Barlow: Has it not been?

Mr. Chairman: I do not believe I have seen a copy. There may well be one here somewhere.

Mr. Barlow: Perhaps we should read it in and then have it circulated or the other way around.

Mr. Baetz: I think I will read it, because the chairman may then rule that it is out of order.

Mr. Chairman: Let us try it.

Mr. Baetz moves that section 37 of the bill be amended by adding thereto the following subsection:

"37(1) Such moneys may include, on the advice of the minister and with the approval of the Lieutenant Governor in Council and the consent of the Legislature, sufficient funds to cover up to 100 per cent of the cost of implementing the provisions of this act in the broader public sector."

Mr. Baetz: We do come back once in a while, Mr. Chairman. You will notice that this time we said "may." We are not forcing anybody's hand, and it does not state an amount of money. It simply says, "sufficient funds to cover up to 100 per cent of the cost."

Mr. Barlow: That also includes zero.

Mr. Chairman: Generally speaking, I would think that any chairman who is awake at the switch would have to make a decision the same way that I will have to make a decision, and that is that any money bill is effectively out of order.

You are presuming an expansion of the intent of the government's bill.

Ms. Gigantes: Mr. Chairman, but surely if I could just suggest, it is not prescriptive, it is only suggestive.

Mr. Baetz: "Suggestive" does not force the hand.

Ms. Gigantes: It is in the bag. It is in the bag.

Mr. Ward: I would just like to suggest that this issue--

I am sorry, I meant the PCs.

Mr. Chairman: Shall we hear from the parliamentary assistant?

Mr. Ward: On some points, you are indistinguishable. How is that for an insult?

Ms. Gigantes: I think you are incompetents.

Mr. Ward: I would like to suggest that we voted this issue previously, and therefore it is out of order.

 $\underline{\text{Ms. Gigantes:}}$  I would suggest that it is out of order because it is meaningless. I do not think it has any meaning.

Mr. Pouliot: That puts me right in the middle.

 $\underline{\text{Mr. Baetz:}}$  One thinks it is too hot and the other one thinks it is too cold.

Ms. Gigantes: Can you accept an amendment that has meaning?

Mr. Baetz: Here we are right in the middle.

Mr. Ward: Then the decent thing to do would be to withdraw.

 $\underline{\text{Mr. Chairman:}}$  Do you want to speak to the amendment, which you have not done yet?

Mr. Baetz: We simply say it may include, it does not force your hand, it does not refer to any specific amount of funds, it could go on up to 100 per cent of the cost, so--

Mr. Chairman: What is the point of the amendment? What does it do?

Mr. Baetz: We will no doubt be coming back to this on the third reading, but the point of the amendment has to do again with the funds for the public sector. We just want to get something more concrete than we have now in the legislation—or in the regulations, or whatever—that deals with the required funds to make this thing possible in the public sector.

Noting the clock, and having already received the indication from across the table here that they will not be supporting this, knowing the government is not going to support it and with the caveat that you know I will be back on third reading of this, I am prepared to withdraw this. Thank you.

We will expect a little co-operation a little further down the line.

Mr. Chairman: You have made my decision a lot easier. Thank you very much.

Mr. Baetz: --always giving. We have got to get a little once in a while.

Mr. Ward: When it comes time for the traditional supper, you can have two Big Macs.

Mr. Baetz: Thank you very much.

Mr. Chairman: Is there anything further on section 37? If not, I will call a vote on that. Shall section 37 carry?

Ms. Caplan: As amended.

Mr. Chairman: As amended.

Section 37, as amended, agreed to.

Section 38 agreed to.

On section 39:

Mr. Baetz: Are there going to be various dates or a proclamation for various parts of the bill?

Ms. Gigantes: You mean a phase-in on the phase-in?

Mr. Ward: I cannot respond to that. I do not know, although I cannot forsee that.

Ms. Caplan: The only thing that I can foresee might be that you have the Pay Equity Commission established first, if something were to happen.

Mr. Ward: That is right. Obviously, you need that in place.

Ms. Caplan: It is to allow it to get up and running.

 $\frac{\text{Mr. Baetz:}}{\text{reading.}}$  Who knows, there might just be additional amendments on

Mr. Ward: If you are referring to this section, I do not think it is normal practice to amend that.

Mr. Baetz: I am not proposing to amend the section.

Mr. Ward: No, I would anticipate that there would not be a series of proclamation dates, but there would be one. As Elinor has pointed out, I think there is an obvious need to have the Pay Equity Commission in place as quickly as possible. As a matter of fact, I am sure that work is ongoing in anticipation of the bill

Mr. Chairman: Shall section 39 carry?

Section 39 agreed to.

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Mr. Chairman: It is normal for us not to pass what in this bill is section 40, the short title, until we have completed the definitions and the other parts of the bill, so at this point it would be--pardon?

Ms. Gigantes: What about the schedule? Do we leave that, too?

Clerk of the Committee: We cannot do that until after you have done section 1.

Ms. Gigantes: Okay.

Mr. Chairman: Section 1, which is the definition section, should follow next.

Ms. Caplan: What about the appendix?

Mr. Chairman: And then that would follow after we have done the--

Mr. Ward: Right. Do we not start with the long title, since that is being amended, too?

Clerk of the Committee: No, because it is the very last thing.

Mr. Ward: Okay.

On section 1:

Mr. Chairman: With respect to definitions starting in section 1, the first one being "bargaining agent," we can go through these fairly rapidly, if you want to follow the lead being given by the chair. Just stop me if there is a problem with respect to any one of them.

Ms. Gigantes: I hope you will not move too quickly.

Mr. Chairman: I will not move too quickly and I will raise my eyes to glance around the room to see if anyone twitches. Shall "bargaining agent" carry? Carried. Shall "broader public sector" carry? Amendment.

Ms. Caplan moves that subsection 1(1) of the bill be amended by striking out the definition of "broader public sector."

Ms. Caplan: It is not necessary.

Mr. Chairman: It is not necessary any more because of Bill 105 moving into Bill 154.

Mr. Ward: Already the bill is less cumbersome.

Mr. Chairman: Is that agreed to by all parties?

Motion agreed to.

Mr. Chairman: Shall "collective agreement" carry? Agreed.

Shall "commission" carry? Agreed.

Shall "compensation" carry?

Ms. Caplan: Stand down any of the ones that there is going to be debate on, and go right through the rest and see what we--

Mr. Chairman: Do you want to do that? Stand down any of those that are controversial or are to be debated, and just get--or do you want to deal with them as we go through them?

Mr. Barlow: Could I ask you a question on that one, Mr. Chairman? I will agree to stand it down--

Mr. Chairman: Well, I am just looking for a formula. We have not agreed.

Ms. Caplan: Stand down the ones that we are debating.

Mr. Chairman: Is that what you all want to do.

Mr. Ward: Let us go through it, stand it down, and then you can have your questions when we are going to deal with it. Is that correct?

Ms. Gigantes: Well, then, we may have--

Mr. Chairman: You might forget your question in the meantime, that is a problem.

Ms. Gigantes: Yes, we may need to seek comfort on something.

Mr. Barlow: Yes, I would just like to have some understanding, where-

Mr. Chairman: What is the "seek comfort".

Mr. Barlow: Is there a definition for "seek comfort?"

Ms. Gigantes: Well, I was going to ask him for it. Mr. Baetz was saying he might seek comfort on a matter earlier.

Mr. Barlow: My question is what all is included under "benefits paid or provided to or for the benefit of a person," etc. What is considered a benefit? I think you want to define that in the act.

Mr. Chairman: You might have then--

Ms. Caplan: I think that is exactly the kind of question that you might want to define, once you see what the differences are in different establishments and what would then be included and not included. It seems to me--

Ms. Gigantes: We have a proposal which we humbly submit to your attention.

Mr. Barlow: Have you?

Ms. Gigantes: Yes, on page 4 of our amendments it is marked on the side "rétribution". I find it hard to believe, but apparently it is a translation for "compensation". Is that right?

Ms. Caplan: This will include work clothes and hard hats. I mean, that is the sort of thing you would want to be able to say, you know--

Mr. Baetz: --must compensate for--

Mr. Barlow: Well, yes, that is what my concern is.

Ms. Caplan: Could we stand it down, because I think that is the sort of thing we will get into a discussion of when we are dealing with the definition?

Mr. Chairman: Is it agreed that we stand it down? Okay.

Shall "effective date" carry? Agreed.

Shall "employee" carry?

Ms. Caplan: There is an amendment.

Mr. Chairman: Ms. Caplan moves that the definition of "employee" in subsection  $\overline{1(1)}$  of the bill be struck out and the following substituted therefor:

"'employee' does not include a student employed for his or her vacation period."

Ms. Gigantes: Ms. Caplan, could we stand that down, along with our proposed amendment to "employee?"

Ms. Caplan: All right.

Mr. Chairman: All right. We will stand that down, as well.

Shall "employer" carry?

Ms. Caplan moves that subsection l(1) of the bill be amended by striking out the definition of "employer."

Agreed?

Ms. Gigantes: That is fine, yes.

Interjection: An employer is an employer is an employer.

Ms. Gigantes: Yes.

Mr. Chairman: Agreed.

"Establishment"?

Ms. Caplan: Stand down?

Mr. Chairman: Stand down.

Ms. Caplan: We have done "female job class."

Interjection.

Ms. Caplan: No, we have not?

Interjection.

Mr. Chairman: Is that all we are dealing with then, part (b), "female job class"? We have dealt with part (a).

Ms. Caplan moves that clause (b) of the definition of "female job class" in subsection l(l) of the bill be amended by striking out "commission" in the first line and inserting in lieu thereof "hearings tribunal."

Mr. Chairman: Well, that is a new one. I have never heard you say that one before.

Ms. Caplan: Not for now. It has been a few minutes.

Mr. Chairman: Agreed? Agreed.

Ms. Caplan moves that the French version of subsection 1(1) of the bill be amended by striking out "d'un territoire" in the first line of clause (a) of the definition of "zone géographique".

Agreed? Agreed.

Is there anything further on "geographic divison"? It is a fairly major clause. I do not want to move too quickly. Shall "geographic division" carry? Carried.

"Job class."

Ms. Gigantes: No, we have "Hearings Tribunal" first.

Mr. Chairman: Oh, sorry. Ms. Caplan?

Ms. Caplan: I do not have it here. I must have it in the wrong spot. Oh, here it is.

Mr. Chairman: Ms. Caplan moves that subsection 1(1) of the bill be amended by adding thereto the following definition:

"'Hearings Tribunal' means the Pay Equity Hearings Tribunal established by this act."

Mr. Chairman: Does that carry? Carried.

Mr. Baetz: Could I make a plea for just a little--

Mr. Chairman: More time?

Mr. Baetz: Yes, just a moment, because we are going to be moving an amendment here, and maybe the legal counsel can give us some help there on this one too, but it has to do with the construction industry and I think it has to do with geographic -- in order to come at the very end of the whole thing.

 $\underline{\text{Mr. Revell:}}$  Mr. Baetz has an amendment. I believe it has been circulated; I am not sure.

Interjection: It has.

Mr. Revell: It would be adding a new subsection to section 1, and the appropriate point to deal with it would be at--I cannot remember which number I have assigned to it.

Mr. Baetz: You said, "RSO 1980, 228."

Mr. Revell: It was section 8, though, I believe.

Ms. Caplan: It was la.

Mr. Revell: Yes, la. When we have finished with all these definitions, Mr. Baetz' motion would be the very next section to consider.

Mr. Baetz: After we have gone through all of them?

Mr. Revell: All the definitions, yes.

Mr. Baetz: Okay, fine, thank you.

Ms. Gigantes: We have an amendment to "job class."

Ms. Caplan: Stand down?

Ms. Gigantes: It is a pretty simple amendment. You might just want to deal with it.

Mr. Chairman: Okay. You are not trying to trick us?

 $\underline{\text{Ms. Gigantes:}}$  Well, I think it is. If there is controversy about it, I am happy to--

Mr. Chairman: Let us hear it.

Ms. Gigantes moves that the definition of "job class" in subsection 1(1) of the bill be amended by striking out "compensation schedule" in the last line and inserting in lieu thereof "salary grade or range of salary rate."

Ms. Gigantes: While it may not carry a great deal of--

Ms. Caplan: Stand down.

Ms. Gigantes: Do you want to stand it down?

Ms. Caplan: Yes.

Ms. Gigantes: Okay.

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Mr. Chairman: We will stand down "job class."

"Job rate"? Shall that carry? It has some of the same similarities as the one Ms. Gigantes just commented on. That is why I am delaying a little.

Ms. Gigantes: You are very kind. We do not have an amendment for "job rate."

Mr. Chairman: "Job rate" is carried.

"Male job class"?

Ms. Gigantes: We already did that in clause l(1)(a).

Mr. Chairman: We did clause (a).

Ms. Caplan: We have clause (b) to do and I believe it changes "commission" to "hearings tribunal." We have an amendment. Do you want me to read the whole thing?

Mr. Chairman: No; Chinese water torture.

Ms. Caplan: I thought you might not want me to. However, I will move it as I have in other amendments, if you will pass it quickly.

Mr. Chairman: Having moved that amendment, I will call for the agreement of the committee on the amendment, which is the technical change. Is that agreed?

Motion agreed to.

Shall clause (b), as amended, now carry? Carried.

Mr. Chairman: "Minister"?

Ms. Gigantes: We have an amendment on that.

Mr. Chairman: Do you want to stand it down or is it another simple one?

Ms. Gigantes: I think we may have a majority on it.

Interjection.

Ms. Gigantes: Actually, maybe we had better stand it down.

 $\underline{\text{Mr. Ward}}$ : I imagine the discussion can be fairly brief. I will explain why we are not voting for the amendment, if that is how you wish us to begin.

Ms. Gigantes: Will you explain fully?

Mr. Ward: The legislation as written indicates that the administration will be under the member of the executive council to whom the administration of this act is assigned. It is my understanding that the executive council can make that determination on any piece of legislation, regardless of what it may say in here. I will keep it to that.

Ms. Gigantes: I did not know that. Is that true, legal counsel, that it does not matter what the Legislature might say about naming the minister, that the executive council can name the minister responsible?

Mr. Revell: Yes, I believe so. The Executive Council Act authorizes the assignment of the duties of an act from one minister to another.

Ms. Gigantes: Is that by person or by position?

Mr. Revell: I believe it is by position.

Ms. Gigantes: Then there is no problem; you can accept our amendment.

Mr. Ward: It works both ways. If you want to vote--

Mr. Chairman: Go ahead, Mr. Baetz, and see how far you get with it.

Mr. Baetz moves that the definition of "minister" in subsection 1(1) of the bill be struck out and the following substituted therefor:

"'Minister' means the Minister of Labour."

Ms. Gigantes: Mr. Baetz, why do we not stand it down until we can get our full vote here tomorrow?

Interjections.

Ms. Gigantes: Unfortunately, my colleague had to leave. We do not have our full complement of votes. Good thinking.

Mr. Chairman: Let us stand it down. We agreed to stand down all the others and we will carry right on.

Mr. Ward: The chairman can break a tie on that one.

Ms. Caplan: The chairman will break the tie.

Mr. Chairman: Yes, I can. Do you want me to do that? How do you know how the chairman is going to break this tie?

Ms. Caplan: I have confidence in the chairman.

Interjections.

Interjection: You have one foot in the door. Do you want to back out again?

Ms. Caplan: Okay, let's go.

Mr. Chairman: May I just ask if a member of this committee is threatening the chairman?

Mr. Baetz: I said, "Go which way you should."

Ms. Caplan: The hour is getting on.

Mr. Chairman: I had my mind made up until I heard those words of wisdom percolate from your left, sir.

The question has been put by Mr. Baetz with respect to changing the definition of "minister" to "Minister of Labour." All in favour of that amendment? All those opposed?

Motion agreed to.

Mr. Barlow: Let the record show that is the first one the Progressive Conservatives won.

Mr. Baetz: I think I will put this in my pocket.

Mr. Chairman: Would you like me to autograph it for you?

Shall the definition of "minister," as amended, carry? Carried.

"Pay equity plan"? Carried.

The NDP amendment has been withdrawn. "Private sector"? Carried.

"Public sector?" Is that carried? Carried.

"Regulations"?

Ms. Gigantes: Regulation.

Ms. Caplan: Do you want to stand it down?

Ms. Gigantes: No.

Mr. Chairman: "Regulations"? Carried.

Ms. Caplan moves that the definition of "review officer" in subsection l(1) of the bill be amended by striking out "28(2)" in the last line and inserting in lieu thereof "33(1)".

Motion agreed to.

Mr. Chairman: Does "review officer," as amended, carry? Carried.

"Posting."

Mr. Ward: We have an amendment, I believe.

Mr. Chairman: I am sorry. Mr. Baetz has a motion before that, I believe.

Mr. Baetz: This is where this comes in now?

Mr. Chairman: Yes.

Mr. Baetz moves that section 1 of the bill be amended by adding thereto the following subsection:

"(la) For the purposes of this act, the employees of an employer in the construction industry, as defined in the Labour Relations Act, who work at construction sites in a geographic division and the employees of the employer in the same geographic division who do not work at construction sites shall be deemed to be in two separate establishments."

Mr. Baetz: I might say that Don Smith would know exactly what I am talking about and so would everybody in the construction industry. Actually what this means is that—I am not sure this is a good example—the headquarters of a construction firm might be in the same city. For example, I do not know if Ellis—Don's headquarters is in Toronto, but its construction site, the domed stadium, is in the same geographic area. The laws governing the wages and benefits of the people on the construction site are set by the Labour Relations Act, are established provincially and are different from the wages and benefits paid to the headquarters office.

They really are two quite different operations, one under the Labour Relations Act, the other just under private enterprise or whatever you want to call it. They are very different and there should be a further amendment later on to once again reflect this fact that the wages and salaries at construction sites are established province-wide under the Labour Relations Act and are therefore different from those at the head office of a construction company.

We have had quite a number of representations from the construction industry, all pointing this out and reminding us that what happens at the construction site in terms of wages and benefits is beyond its control but that certainly the two should be treated quite differently. It certainly made a lot of sense to us, and we suspect that the people in the construction industry know maybe a little more about the construction industry than some of us around this table. We urge the committee listen to what the industry has to say on this one.

Ms. Gigantes: I will not be supporting the amendment. I do not think there will be problems because there is a provincially set wage rate. I do not look upon that as a unique situation. For example, municipalities panicked when we first talked, on Bill 105, of having public sector coverage and went around and told us that because firemen's wages and police wages were arbitrated on a provincial level, they could not possibly have the application without all kinds of refinement and so on.

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This is really not the problem. The comparability is not going to be something that is going to create any different kind of situation in the

construction industry or in a municipality in terms of fire and police. These are just existing facts of the work force and they will all fold in under this legislation.

Mr. Ward: Many of us have heard from representatives of the industry within our ridings and whatever with regard to the concern they have as a result of the centralized bargaining issue. I cannot help but feel that the kind of exemption being proposed is inappropriate. We have not exempted any other sector or any other individuals from the obligations of this act and I have some real difficulties with it.

I am not saying it is not a complex issue. When we looked at the examples that were brought before us, I think all of us had some real concerns as to whether or not those comparisons were or were not legitimate. Those are determinations we cannot make here. In terms of looking into issues such as this, we have passed requirements that matters of this sort of concern can at least be studied. I guess that is the only out I could suggest to anybody, that it does not preclude the commission looking into this to see the extent to which it is or is not a legitimate complaint.

Ms. Gigantes: (Inaudible) at least if there is any comparability established.

Mr. Ward: We will not be supporting the amendment.

Mr. Baetz: Did I hear that you will not support the amendment? Okay. I think this is a pretty sad commentary on this committee. We have heard from the construction industry time and time again and so have some of the other parties around here. They are the people who know what is going on in the industry, more so perhaps than we do, and they have made what we think is a very sensible, logical request. We hear—the parliamentary assistant said so a moment ago—"We are not sure how this will affect them, but for the time being we will put it in the legislation anyway, and if it does not work out maybe someone can change it."

That is a beck of a poor way to go about introducing legislation. Private enterprise will have enough problems with this legislation without this committee piling it on one industry that has said it presents a real problem, a very important industry and one that is very much affected through the provincial Labour Relations Act. Yet we are prepared to say, "Sorry, we will enshrine it in legislation anyway and if it creates problems later on, we can some time, in the fullness of time, change the legislation."

I think it is a sad commentary. I just want to make it clear that our party has listened to the construction industry on this one. Obviously, we cannot force your hands in this, but I would have hoped that we would have got support from the majority of this committee. If you want to suggest that we stand it down for the night, and if the parliamentary assistant wants to consult further between now and tomorrow morning, we would be delighted to have him do so.

I tell you this is a very important issue for the construction industry. Just to say, because it is maybe late in the day or because we are getting tired and hassled with this, "Just put it in the act and then we will see it what happens later on"--

Mr. Ward: He is imputing motive or whatever the phrase is.

Mr. Baetz: I cannot help but feel rather strongly about it.

Ms. Gigantes: I will make a small comment. I do not often make wagers, but I would make a wager with Mr. Baetz that when it comes to the application of this legislation, we are not going to see the same kind of case made by the members of the Council of Ontario Construction Assocations when they came before this committee. The kind of presentation they made that would have suggested the enormous increase that would be required under this legislation for their female office staff, I put to you, is not going to be made when they work out how this legislation should be applied to them. They will be making a very different case. I suspect they will be, in large measure, successful as far I would like to see them be successful.

Ms. Caplan: We have already agreed in looking at the case that was presented--

Ms. Gigantes: This is quite a deliberate--

Ms. Caplan: --that the methodology was flawed because of some interpretations within the act. I think that was accepted and understood. In discussions with them following that, there was that acknowledgement.

Ms. Gigantes: Are we ready for the question?

Mr. Barlow: I have just one brief remark on it. I do not know whether the government members and the members of the third party fully understand how the negotiating is done on a province-wide basis. The wages are not set by the individual contractor. They are set by a bargaining group that will sit down in each of the various fields, whether it is the bricklayers or the hoisting engineers or whatever area of construction. It is a province-wide rate that is set down.

Ms. Gigantes: Just as the hospitals and nurses do.

Mr. Barlow: It is not the same as hospitals. It is not the same as the police department.

Ms. Gigantes: Of course, it is.

Mr. Barlow: No, it is not the same. One group sits down at a table with the union on the other side of the table and they negotiate for the whole of the province. There are some minor variations in regions of northern Ontario; perhaps there is a different rate of pay.

 $\underline{\text{Ms. Gigantes:}}$  The same kind of thing happens in the hospitals during negotiation.

Mr. Barlow: It is not. You cannot compare the hospital wages in Kenora with the wages in Ottawa or Cambridge because they do not--

Ms. Gigantes: You certainly can.

Mr. Barlow: They do not negotiate at the same table.

Ms. Gigantes: Yes, they do, through the Ontario Hospital Association.

 $\underline{\text{Mr. Barlow:}}$  The construction industry does it on a province-wide basis.

Ms. Gigantes: There are some hospitals that do not join in that joint negotiation, but most hospitals in Ontario do. Mr. Baetz will certainly know that from Ottawa.

Mr. Barlow: Their contract comes up at the same date every two or three years, whenever it happens to be in the construction industry.

Ms. Gigantes: That is right; exactly.

Mr. Barlow: I am surprised that Don Smith has not lobbied a little with the Liberal Party on this one.

Ms. Gigantes: I do not see why we should debate it longer.

Mr. Chairman: Are you ready to vote?

Ms. Caplan: I am ready.

Mr. Baetz: The construction association has special status in various pieces of legislation precisely for this reason, but we are going to ignore all that.

 $\underline{\text{Mr. Barlow:}}$  It is in the Labour Relations Act for one thing. They have special status.

Mr. Chairman: Okay. There is no agreement on standing down. What you wish to do is vote. All in favour of the amendment proposed by Mr. Baetz? Opposed?

Motion negatived.

Mr. Chairman: I, too, can count. Now, that this is lost--

Ms. Caplan: "Posting."

Ms. Gigantes: There is no amendment to "posting."

Ms. Caplan: Yes, there is.

Ms. Gigantes: There is? I thought the amendment came in a different section.

Mr. Chairman: I do not think it does.

Ms. Caplan: Subsection 1(2a).

Ms. Gigantes: Yes, but we have not finished subsection 1(1) yet. We have an amendment to 1(1) still, and that is on page 9.

Mr. Chairman: Your page 9.

 $\underline{\text{Ms. Gigantes}}$ : Yes. The one I would address is the definition of "total payroll". This relates to our definition of "compensation," and if "compensation" is to be stood down, perhaps we should stand down that one too. I just want to indicate that it exists as a motion from us.

Mr. Chairman: So it is tabled but stood down.

Ms. Gigantes: Okay.

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Mr. Chairman: Ms. Caplan moves that section 1 of the bill be amended by adding thereto the following subsection:

- "(2a) The employer shall provide a copy of every document posted in the work place under this act.
- "(a) to the bargaining agent, if any, that represents the employees who are affected by the document;
- "(b) to any employee who requests a copy of the document, if the employee is not represented by a bargaining agent and the employee is affected by the document."

Is there any comment on subsection 2a?

Ms. Gigantes: We will support that.

Mr. Chairman: You will?

Ms. Gigantes: I will.

Mr. Chairman: "We"? Is that singular, since you are all alone over there?

Mr. Barlow: It is the royal "we."

Ms. Caplan: We can do subsections 2 and 2a together.

Mr. Chairman: That is what I am intending to do. I am talking about the amendment 2a, but I will go back and pick up 2 in total, if we get agreement on 2a.

Ms. Caplan: Yes, we have agreement.

Mr. Chairman: I am not sure I even got a nod yet.

Mr. Baetz: I am still thinking construction associations. I am thinking of the important things in this legislation. I agree anyway. You are seeking for unanimous—

Mr. Chairman: That is agreed. Shall the addition of subsection 2a carry? Carried.

Motion agreed to.

Mr. Chairman: Shall subsection 2, as amended, including the added subsection, carry? Carried.

How is that for wording?

Ms. Gigantes: Subsection 3 is likely to generate some prolonged discussion.

Mr. Ward: Let us do section 9 then.

Ms. Gigantes: Are you ready for section 9?

Mr. Chairman: Do you want to go to section 9?

Let us do subsection 3.

Ms. Gigantes: We have an amendment to subsection 1(3) on page 12.

Mr. Ward: This is going to take a while, is it not?

Ms. Gigantes: Yes.

Mr. Ward: Stand it down.

Mr. Chairman: We are going to stand it down. Anything else on subsection 3? If there is not, we will go to subsection 4.

Ms. Gigantes: Was subsection 1(4) not passed?

Ms. Caplan: No. Subsection 4(2) is what we were--

Mr. Chairman: Subsection 1(4), page 10 of the bill.

Ms. Caplan: I do not think we have an amendment on that. Do you?

Ms. Gigantes: No.

Mr. Chairman: Are there any amendments on subsection 1(4)? Is it agreed that it be carried? That is agreed.

Mr. Ward: Now, can we vote on the regulations?

Mr. Chairman: Ms. Caplan has an added subsection 1(5).

Ms. Caplan moves that subsection 1 of the bill be amended by adding thereto the following subsection:

"(5) A job class may consist of only one position if it is unique in the establishment because its duties, responsibilities, qualifications, recruiting procedures or compensation schedule are not similar to those of any other position in the establishment."

Ms. Gigantes: I have no objections to this. I would just point out that it does relate back to the discussion we had on the other amendment in which we expressed concern about the work the commission should undertake on establishments where there is no male comparable.

Mr. Chairman: Do you have any comment?

Mr. Barlow: Yes. I think that is a dumb amendment. Whoever heard of a group--

Mr. Ward: You should be more direct.

Mr. Barlow: I thought I would be more direct. A group has to be more than one person. I have a dictionary definition of "group."

Ms. Caplan: It says "job class," and we have incumbency of one. It

does not say "group." It says, "a job class may consist of only one position" if that one position is unique.

Mr. Barlow: All right. What is the job class then?

Mr. Ward: Stand it down.

Mr. Baetz: I think maybe you had better, because you are going to get a real argument from us on this one.

Ms. Caplan: Okay.

Mr. Chairman: We will stand it down then. We have a subsection 1(6) as well.

Ms. Caplan moves that section 1 of the bill be amended by adding thereto the following subsection:

"(6) A position shall not be assigned to a job class different than that of other positions in the same establishment that have similar duties and responsibilites, require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule only because the needs of the occupant of the position have been accommodated for the purpose of complying with the Human Rights Code, 1981."

Ms. Caplan: Does everybody like that one?

Ms. Gigantes: Yes.

Ms. Caplan: I knew you would.

Mr. Chairman: Is there any comment with respect to the proposed addition of subsection 6? Shall subsection 1(6) carry?

Motion agreed to.

Mr. Chairman: Ms. Gigantes, do you have an amendment, your page 14?

Ms. Gigantes: Yes.

Mr. Chairman: Ms. Gigantes moves that the bill be amended by adding thereto the following section:

- "la. (1) The employer and the bargaining agent or agents for the employer's employees or, if there is no bargaining agent, the employees, may agree that for purposes of equal pay plans the employees of one or more divisions or units of the employer constitute a separate establishment.
- "(2) The parties to the agreement under subsection (1) may determine which employees constitute a division or unit.
- "(3) Two or more employers and the bargaining agent or agents for their employees, who come together to negotiate a central agreement, may agree that, for the purposes of an equal pay plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.
- "(4) Two or more municipalities in the same geographic division and the bargaining agent or agents for their employees or, if there is no bargaining

agent, the employees, may agree that, for the purposes of an equal pay plan, all the employees constitute a single establishment and the municipalities shall be considered to be a single employer.

"(5) Notwithstanding that the employees of two or more employers or municipalities are considered to be one establishment under subsection (3) or (4), each employer is responsible for implementing and maintaining the pay equity plan with respect to the employer's employees."

Mr. Ward: Stand it down.

Mr. Barlow: That is not easy to digest at this hour of the evening. May we stand that one down?

Ms. Gigantes: All right.

Mr. Chairman: Members of the committee, this may be a logical time to break. Do you want to go further?

Mr. Ward: Section 9.

Mr. Baetz: This is a good time to break.

 $\underline{\text{Mr. Ward:}}$  Could we not finish section 9? We have talked around it all day.

Mr. Baetz: Okay.

Mr. Chairman: We can do section 9 then, page 18. If this gets into extensive debate, it will have to be stood down.

Mr. Ward: Understood.

Mr. Chairman: I think it is unfair to the committee members, after a relatively lengthy day, to expect them to continue going ad infinitum, which is a Latin word, Reverend Davis, the meaning of which you are no doubt well aware.

# 1730

Mr. Ward: Is that eternity?

Mr. Chairman: Yes. Just about, or maybe even longer.

Mr. Ward moves that clauses 9(a) and (b) of the bill be struck out and the following substituted therefor:

"(a) The second anniversary of the effective date, in respect of employers in the public sector and in respect of employers in the private sector who have at least 500 employees on the effective date."

Ms. Gigantes: Mr. Chairman, I would like to move an amendment to the amendment. I hope I can say it right without a formal amendment written out.

Mr. Chairman: Ms. Gigantes moves that "the second anniversary of" be struck out and replaced with "18 months following the effective date."

Mr. Ward: Your suggestion, then, is 18 months in terms of the amount

of time in which a plan shall be posted. Our amendment, in fact, is two years, 24 months.

Ms. Gigantes: That is right. The 18 months would apply only to the public sector. It would provide that there was no overlap between the period in which there might be a complaint about the plan and the period of the payout, which begins at the second anniversary.

Mr. Baetz: What are we dealing with here, the amendment or the amendment to the amendment? Are we ready for the question on the amendment to the amendment?

Mr. Chairman: I can call that. Shall the amendment to the amendment carry?

Motion negatived.

Mr. Chairman: It lost by a squeaker. Now we will go back to the government amendment. All those in favour of the government amendment? All those opposed?

Motion agreed to.

Ms. Gigantes: Now we have a general motion?

Ms. Caplan: Yes. A general one on the mandatory posting date.

Mr. Chairman: Ms. Caplan moves that legislative counsel be authorized to make corrections to the bill, notwithstanding the motions already passed dealing with section 11 and subsections 13(2), (4), (6), (7) and (8), 14(1) and (4), in accordance with the committee's subsequent decision to retain the concept of "mandatory posting date."

Motion agreed to.

Ms. Gigantes: Cross your heart and point to heaven that that covers all the mistakes we made.

Mr. Chairman: That is agreed. Shall section 9, as amended, carry?

Section 9, as amended, agreed to.

The committee adjourned at 5:35 p.m.

C/12 PN XC 14 - 578

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PAY EQUITY ACT

THURSDAY, APRIL 9, 1987

# STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC) Caplan, E. (Oriole L)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Knight, D. S. (Halton-Burlington L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Ward, C. C. (Wentworth North L)

### Substitutions:

Baetz, R. C. (Ottawa West PC) for Mr. O'Connor

Barlow, W. W. (Cambridge PC) for Mr. Rowe

McLean, A. K. (Simcoe East PC) for Ms. Fish

Offer, S. (Mississauga North L) for Mr. Polsinelli

Clerk: Mellor, L.

### Staff:

Revell, D. L., Legislative Counsel

Schuh, C., Legislative Counsel

Evans, C. A., Research Officer, Legislative Research Service

#### Witnesses:

From the Ministry of the Attorney General:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Herman, T., Counsel, Policy Development Division

From the Office responsible for Women's Issues:

Marlatt, J., Director, Consultative Services Branch, Ontario Women's Directorate

### LEGISLATIVE ASSEMBLY OF ONTARIO

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

# Thursday, April 9 1987

The committee resumed at 10:10 a.m. in room 151.

PAY EQUITY ACT (continued)

Consideration of Bill 154, An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector.

On section 1:

Mr. Chairman: At your desks, the clerk has prepared a list that outlines the remaining items to be concluded in clause-by-clause. It is a rather extensive list, so we are going to have to move as quickly as we can in order to complete it in the allotted time.

I suggest we follow the list in the order in which the clerk has prepared it. I do not think there is any reason to bounce around any more to various clauses unless there is a very good reason for that. I strongly recommend we follow the list we have before us.

It starts with definitions. The first definition under section 1, which is yet to be completed, is the definition of "compensation." As you recall, we stood down some of these yesterday because there was some discussion that some members wanted to have with respect to some of these items.

I believe we can get started with "compensation." I forget who stood that one down, but I believe it was Ms. Gigantes. Ms. Gigantes is coming with it now so we can perhaps proceed with that. Ms. Gigantes, whenever you are ready you can indicate your amendment.

Ms. Gigantes: Thank you for your patience, Mr. Chairman.

Mr. Chairman: Ms. Gigantes moves that subsection 1(1) of the bill be amended by striking out the definition of "compensation" and substituting the following therefor:

"'Compensation' means all forms of wages, salaries, benefits and perquisites paid or provided to or for the benefit of an employee in a fixed or ascertainable amount in respect of any work performed for his or her employer."

Ms. Gigantes: I think the intent of this redefinition is fairly obvious. It is to make sure that when we are talking about compensation in terms of the comparability of recompense for work under this legislation, we are talking about all kinds of compensation that we can put a dollar value on.

Mr. Ward: Looking at your definition, which seems to me to enunciate in specific terms some of the forms of payments and benefits, I do not see how your amendment in any way improves the wording that is in the bill as it stands.

Ms. Gigantes: There is no reference in the bill to perks.

Mr. Ward: It says "all payments and benefits."

Ms. Gigantes: Is a perk a benefit under your definition?

Mr. Ward: It depends on what a perk is.

Mr. Baetz: It is not a liability.

Mr. Ward: What is a perk?

Ms. Gigantes: A perk is a car.

Mr. Ward: No. A car is a benefit.

Ms. Gigantes: For some people, it is a benefit. For other people, a benefit is something that is part of a payment system where you get a cheque-

Mr. Chairman: A membership in a golf course would be a perk.

Ms. Gigantes: Yes.

 $\underline{\text{Mr. Ward}}$ : For instance, membership in a professional association is a perk.

Ms. Gigantes: Yes.

Mr. Ward: Even though it may, in fact, be a prerequisite.

Ms. Gigantes: Yes, because if you are getting--

Mr. Ward: Quite frankly, I think our definition is broader than yours.

Ms. Gigantes: Broader?

Mr. Ward: Yes. It is "all payments and benefits." I wonder if legislative counsel can help.

Mr. Revell: In my opinion, the government definition is, in fact, wider. The definition means all payments and benefits paid, whereas the proposed motion means all forms of wages, salary, benefits and perquisites. Wages and salary would not, in my opinion, include commission, for example, whereas "payments and benefits paid or provided to or for" would, in fact, catch the commission seller.

Ms. Gigantes: I feel the need to have "perquisites" in that definition. Would you accept an amendment which added "perquisites" to your definition?

Mr. Ward: If you want to add "all payments, benefits and perquisites," that is fine. The intent was that it would be broad.

 $\underline{\text{Mr. Chairman}}$ : Why not withdraw the earlier amendment and add the word-

Ms. Gigantes: There is the other difference, which is that our amendment deals with "any work performed for his or her employer."

Mr. Baetz: Why do we not deal with the amendment? We are ready for the question here.

Mr. Chairman: Are you leaving the original amendment?

Ms. Gigantes: We will move an amendment to the government definition.

Mr. Revell: I have just been consulting with my colleague Miss Schuh, who has been responsible for the French version of the bill. The word "perquisites" will essentially translate in French as "benefits," so that essentially we will end up with three words in English to describe what are two concepts.

In my opinion, a perk is a benefit that is available to an employee. The company car is a perk that is a benefit.

Mr. Baetz: In view of this opinion by the legislative counsel, why do we not proceed with the question?

Mr. Chairman: I am prepared to proceed with the question. I do not have a clear amendment, though. We had an original amendment tabled, which apparently may not suit Ms. Gigantes at this point. If she wants to withdraw that and put another amendment, then I think we should proceed and vote.

Ms. Gigantes: Mr. Barlow had a question.

Mr. Barlow: I just had a question on benefits in general. Such things as shift premiums for the night shift sort of thing, is that a benefit? What about an on-call premium for hydro workers, for example; they get paid extra because they might be called in the middle of the night.

Ms. Gigantes: That would be taken account of under working conditions.

Mr. Ward: Those are payments.

Ms. Gigantes: They are payments, but you would balance them out in terms of evaluating the job by looking at the working conditions when you were making a comparison.

Mr. Ward: You can balance them out in the calculation in the comparison. Frankly, in all sincerity, I prefer the broader definition as written.

Mr. Baetz: Yes, I agree.

Ms. Gigantes: The other difference in our amendment which I will draw to your attention is that we have talked about any work the employee performs for the employer.

Mr. Ward: Explain what the difference is.

Ms. Gigantes: There may be a difference in terms of the way--if a position is created in a firm but one person in that position gets paid extra for doing something that is defined outside of that position; I do not know.

Ms. Caplan: The legislation refers to performed functions. It is not that you are talking about the difference between "work" and "any work." Performed functions would be any work.

Mr. Ward: It goes back to the job class.

Ms. Caplan: That is right.

Mr. Ward: That is where the comparison is done.

Ms. Caplan: Yes. I think your concept is unnecessary. The definition is very broad and deals with all functions performed.

Ms. Gigantes: Let us vote.

Mr. Chairman: We do not know what we are voting on yet. What are we voting on?

Ms. Gigantes: We will vote on the amendment.

Mr. Chairman: The original amendment you tabled?

Ms. Gigantes: Yes.

Mr. Chairman: All in favour of Ms. Gigantes amendment? Opposed?

Motion negatived.

# 1020

Mr. Chairman: The next definition.

Clerk of the Committee: "Compensation," as written.

Mr. Chairman: Shall the definition of "compensation," as printed, carry? Carried.

Next, "employee." Would the government proceed with its amendment?

Ms. Caplan: I move that subsection l(1) of the bill be amended by striking out the definition of "employee" and substituting the following therefor:

"'employee' means a person who performs any work for or supplies any service to an employer for compensation and includes employees of contractors and subcontractors"--oh, that is the NDP one. Just a minute.

Ms. Gigantes: I really liked it.

Ms. Caplan: I knew that was not ours. I had it turned to yours.

Mr. Chairman: For the record, cancel all of the above.

Ms. Caplan: For the record, cancel all of the above. Right.

Mr. Chairman: Ms. Caplan moves that the definition of "employee" in subsection 1(1) of the bill be struck out and the following substituted therefor:

"'employee' does not include a student employed for his or her vacation period."

Ms. Gigantes, do you want to separate the two amendments or do you wish to speak to yours now and amend the amendment? You can amend the amendment or we can vote on one, deal with that and then take yours separately.

Ms. Gigantes: I think we can take them separately. On this proposal, why is it necessary?

Mr. Ward: We deleted the definition of "employer" in the bill (inaudible) explanation being given.

Ms. Gigantes: Your definition of "employee" printed in the bill says "'employee' means a person employed by an employer but does not include a student employed"--

Mr. Ward: We do not define "employer" in the bill.

Ms. Gigantes: I see.

Mr. Chairman: I will call the amendment. All in favour of the amendment? Opposed?

Motion agreed to.

Ms. Gigantes: It is very complex. I think what we had better do, having passed that amendment, is suggest that we have a clause (b) to "employee."

Mr. Chairman: Ms. Gigantes moves that subsection 1(1) of the bill be amended by adding a clause (b) to the definition of "employee" as follows:

"(b) 'employee' means a person who performs any work or supplies any services for compensation and includes employees of contractors and subcontractors performing work or supplying services."

Mr. Ward: Can we have an explanation?

Ms. Gigantes: Yes. We have set out a piece of legislation which calls upon employers to provide a system of making pay equity adjustments. We have said that the establishment is the people who are employed by the employer; and what the employer can do in order to get around the aegis of this act is to contract out, for example. We have seen many examples in recent times. If a hospital has cleaners on staff and the hospital will have to make wage adjustments under this legislation, the hospital may seek to avoid making wage adjustments by contracting out.

Mr. Ward: How does the contractor avoid making wage adjustments? If the theory and the purpose of the bill is to end unconscious or conscious discriminatory wage practices between male and female job classes, how does the contractor avoid coverage under the bill?

Ms. Gigantes: For the contractor, there may be no jobs which will require comparability. We have set up a system in this legislation which provides a formula for saying when wage adjustments may occur or be required to occur, but if a subcontractor has nothing but one category, job class-

Mr. Ward: A hundred per cent female employees.

Ms. Gigantes: It could be 100 per cent female or it could be 100 per

cent male and female; it does not matter. If everybody who is doing the cleaning job through the contractor is paid at the same level, the contractor has no obligation at all to deal with this legislation. Everybody who makes minimum wage for the same job class gets paid equally. That is what happens.

We are encouraging large employers to contract out certain job classes so that they do not have to deal with them in terms of this legislation. This is an item which has been raised to us as a committee time and again by women's groups.

Mr. Chairman: Are you ready to vote on proposed clause (b) to the definition? All in favour? Opposed?

Motion negatived.

Mr. Chairman: Shall the definition of "employee," as amended, carry? Carried.

Next is "establishment."

Ms. Gigantes moves that subsection 1(1) of the bill be amended by striking out the definition of "establishment" and substituting the following therefor:

"'Establishment' means all of the employees in Ontario of an emp]oyer or such divisions or units of employees as may be agreed upon under section la."

Ms. Gigantes: Section la is an amendment which we will be putting. In fact, it might be better to deal with section la first, but I am quite willing to discuss this amendment pure and simple and explain what we are looking for.

We believe the geographic division of the establishment which is set out in the legislation is one in which employers on different sides of a boundary line, which might be a street, will be able to avoid comparing the comparable work done by employees who might work across the road from each other. It is a very artificial division in which the full benefits of this legislation, whatever they may be, would not be available to the employees of an establishment.

We believe legislation should be such that an employer has to look at all the employees in a firm or an organization and do the comparisons for purposes of job evaluation and compensation among all the employees of the organization or firm.

Mr. Ward: I do not think there is any need to comment further. I guess the amendment does not ignore the fact that there are regional differences in levels of compensation, but that is an issue you probably do not agree with either, so I think we will leave it at that.

Ms. Gigantes: We do not have one minimum wage for one area and another minimum wage for another area.

Mr. Ward: Not for a minimum.

Ms. Gigantes: I do not think employers should be able to look upon the definition of "establishment" in this bill and say, "Good, my employees in Hamilton"--

Mr. Ward: Seventy-five per cent of the employers in this province operate at one establishment.

Ms. Gigantes: That is fine.

Mr. Charlton: Some of them are breaking down large establishments in places like Hamilton and moving them into small plants out there in the geographic regions that your act defines to avoid paying higher wages.

Ms. Gigantes: We know how employers have and will continue to manipulate any kinds of artificial definitions that we give them.

Mr. Ward: Where is that happening?

Mr. Charlton: We had it happen in Hamilton with Westinghouse.

Ms. Gigantes: He does not live in that area. He would not know about that.

1030

Mr. Charlton: Some of the people you represent are unemployed now because of that.

Mr. Chairman: The effect of your amendment would be to remove the comparisons that are now defined within geographic areas so that you could compare a high-pay region with a low-pay region.

Ms. Gigantes: Yes.

Mr. Chairman: In other words, you see no distinction between a high-pay region with all the trappings that normally go along with that, like higher housing costs and higher costs in terms of virtually every form of lifestyle, and—to pick a community—a lifestyle in Kapuskasing, where you might have a lower wage rate but a much lower demand in terms of cost of living. You do not see that distinction?

Ms. Gigantes: Why is it that in public terms the government of Ontario, in negotiation with its own employees, does not adopt that silly kind of notion?

Mr. Chairman: There is nothing silly about it at all.

Ms. Gigantes: It is a very silly notion.

Mr. Chairman: It is not silly. You used the example, if I can suggest it for a moment.

Mr. Charlton: Your government did not adopt it either.

Ms. Gigantes: Should we have one minimum wage in Toronto and another in Kapuskasing?

Mr. Chairman: You used the example of a minimum wage. We are not talking about minimum wage legislation in this bill.

Ms. Gigantes: We are talking about wage legislation.

Mr. Chairman: We are talking about comparisons in different regions. I find it absolutely ludicrous to come up with that kind of example.

Ms. Gigantes: What example? Do you mean the minimum wage?

Mr. Chairman: The example that you used.

Ms. Gigantes: Why should we not have a lower minimum wage in Kapuskasing if housing costs are lower?

Mr. Chairman: Following your logic, everybody would make exactly the same amount of money throughout the entire province.

Ms. Gigantes: Absolutely not.

Mr. Chairman: That is exactly what you are suggesting.

Ms. Caplan: On a point of order: Since the chairman is becoming so exercised, would it be possible to put a motion that the motion now be put?

Mr. Chairman: I think that would be a good idea. Are you prepared for the motion?

As chairman, I simply wanted to determine in my own mind if that is what the impact of the amendment was.

Ms. Gigantes: Absolutely.

Mr. Chairman: Having determined that is what the impact of the amendment was, I did get exercised.

Ms. Gigantes: What exercised you was my argument against your flawed logic.

Ms. Caplan: Before we get on to that --

Mr. Chairman: Are you in favour of your amendment? It was just about lost unanimously. All those opposed?

Mr. Baetz: Are you not voting, Mr. Chairman?

Mr. Chairman: Sure, I will vote in opposition. Surprise. We can now vote on "establishment" as printed. All in favour of "establishment" as printed? That is carried.

We will now deal with the definition of "job class."

Mr. Barlow: I have a handwritten amendment that is being circulated.

Mr. Chairman: Mr. Barlow moves that the definition of "job class" be amended by striking out "those" in the first line and inserting in lieu thereof "a group of at least five."

Mr. Barlow: The effect of the motion is rather obvious. It would create a minimum incumbency of five in any one job class.

Mr. Ward: The government will not support the amendment, which would have the effect of seriously limiting the number of comparisons that could take place in many instances.

Mr. Baetz: Are you suggesting that it should be one?

Mr. Ward: That is correct.

Mr. Baetz: We are back into the group-of-one question.

Mr. Ward: We had that debate earlier.

Mr. Baetz: I think that issue will be coming up again later on. I think you have an amendment coming.

Ms. Gigantes: (Inaudible) a job class where there is one position.

Mr. Baetz: Maybe this is not the time to get into that. We will be into it again shortly.

Ms. Gigantes: Fine. We are ready for a vote.

Mr. Baetz: Is it in order to ask a question on the "job class" definition? Under clause (b), we talk about "a job class that a review officer or the commission decides is a female job class or a job class that the employer, with the agreement" and so forth. We are giving to the review officer and the commission, it seems to me, rather sweeping powers to determine what the job class is. Under clause (a), it simply says it is "a job class in which 60 per cent or more of the members are female."

I wonder whether some of our problems with the regulations under clause 35(c), where we have given sweeping powers to adopt regulations dealing with this issue of deciding what is a job class to the commission or the review officer, are not a result of having given the review officer or the commission sweeping powers under this definition.

Mr. Ward: Your reference to clause (b) is in the definitions of "male job class" and "female job class"?

Mr. Baetz: Yes.

Mr. Ward: That gives the commission the authority above and beyond the 60 per cent and 70 per cent test to make a determination whether a job class is male or female on the basis of other criteria, such as the one enunciated in subsection 1(4), which indicates that a commission could have regard to historical incumbency.

If you had a situation where an employer tried to avoid the 60 per cent and 70 per cent test by having 50 per cent male secretaries, or whatever, the commission is going to say: "It is an historically incumbent female job class. You are not going to avoid it by playing with figures." That is the whole point of it.

Mr. McLean: (Inaudible) comparing one company with another.

Ms. Caplan: There is nothing in the regulations, but from the cases that are dealt with, the regulations would then list what possibly were the results.

Mr. Chairman: In one company, and not across geographic boundaries.

Mr. Baetz: My point here is that if we agree on this definition of

"job class" and how it is to be determined, then you have to agree with the broad regulations that give the power to spell out what these criteria are.

Mr. Chairman: You have shifted over to another section.

Mr. Baetz: I have shifted a little bit, but I will get back to that.

Mr. Chairman: Are you ready for the vote on "job class"? The amendment would call for "job class" to be defined--I am not reading the amendment exactly--to increase the number from one to five. If you agree with that, then you will vote for the amendment.

All in favour of the amendment? Opposed?

Motion negatived.

Ms. Gigantes: I have an amendment.

Mr. Chairman: On the same one?

Ms. Gigantes: Yes.

Mr. Chairman: Ms. Gigantes moves that the definition of "job class" in subsection 1(1) of the bill be amended by striking out "compensation schedule" in the last line and inserting in lieu thereof "salary grade or range of salary rates."

Has that amendment been circulated, Ms. Gigantes?

Ms. Gigantes: Yes. It was part of the second amendment package. I am afraid it is unnumbered because it came in our second amendment package.

Interjection.

 $\underline{\text{Ms. Gigantes:}}$  Mr. Charlton says it was the fourth amendment package. He may be right.

Mr. Chairman: It is a short one.

Ms. Gigantes: Yes, it is. What we are trying to do here is to make explicit what is meant by compensation schedule. In order to make the point, I suggest that the salary grade could be attached to one position which did not have a range of salary rates, whereas a range of salary rates is something that would be useful in the mechanism that is now proposed under the government-amended section 5.

If we deal with an establishment where one job class does not have a range of salary rates, for example, a clerk 1 with a range of salary rates from \$13,000 to \$15,000 would not exist, but there would be a job called "clerk" which earns \$14,000, that is what we would like to indicate by "salary grade."

### 1040

Mr. Chairman: Is there any comment?

Mr. Ward: Frankly, I do not see what you achieve in that, above and beyond the compensation schedule.

Ms. Gigantes: What is a compensation schedule for a clerk position? In many firms, what you have now is a list of payments for jobs that is called a schedule.

Mr. Ward: Tell me what is the difference. We are sitting here and we cannot see any difference between your amendment and the way the bill is written.

Ms. Gigantes: I was just about to give you an example. In many firms, you have a description of pay schedules that simply says "schedule" at the top. It says what a clerk makes, what a receptionist makes, what a bartender makes, or whatever. Is that a compensation schedule? What meaning does it have? We are concerned about trying to qualify that term.

Ms. Herman: I have just one concern-and I have not thought it out-that is, whether we lose anything by going from the concept of compensation to the concept of salary. I wonder whether there may be some situations where there will be a schedule that will include things other than salaries such as, for example, rates of commission. I am trying to figure out whether something is lost by reverting from the compensation concept to a salary notion.

Ms. Gigantes: I think not. I think under your other definition of compensation that is used for the purposes of comparison, obviously, what you are looking at in the bill is the total compensation, so the salary would be one element of that. It is the starting element in any comparison.

All we are trying to do here is to get some meaning to the sense of compensation schedule. Again, I will say that it is not uncommon for jobs in a firm simply to be listed and called a pay schedule. That does not have any meaning in the context of this legislation.

Mr. Ward: We have a very broad definition of compensation that we just approved. It is defined. We dealt with the issue.

Ms. Gigantes: Yes, but what does a compensation schedule mean?

Mr. Ward: We dealt with the issue of job classes and levels throughout the course of the bill. My concern is the extent to which we have defined your new terminology? To me, salary grade is a very specific concept.

Mr. Charlton: Again, that is our problem. We also have not defined compensation schedule.

Mr. Ward: That is all I am saying. It is a specific concept; salary grade or range of salary. Why would you not leave it open-ended and broad?

Ms. Gigantes: I would like to know how, under this legislation, someone is supposed to engage in comparisons of wages associated with job classes. When one is given a thing called a schedule, is that a compensation schedule? It is not a compensation schedule in the sense that, in this legislation, it is associated with job classes. It is simply a list that is often called a schedule. In order to indicate that we are potentially talking about two different things in the application of this legislation, we want to make clear that there can be the identification of a salary grade or a range of salary rates.

Mr. Baetz: Surely these are the sorts of things that a reasonably intelligent staff and commission will be able to see and deal with.

Mr. Ward: If we change that, what happens with a 100 per cent commission system?

Ms. Gigantes: Nothing happens. Your definition of "compensation" is something else entirely. The way you deal with your definition of "compensation," the way various job classes can be associated or a group of jobs can be turned into a job class, is just part of the elements you put into the comparability. What we want to try to indicate here is that when somebody says, "Here is a schedule," we are looking at two different types of schedule. One is a simple list, which we could call a salary grade, and the other might be a range of salary rates.

Mr. Chairman: We will hold the vote just for a moment while this matter gets settled with the staff.

Mr. Ward: Okay. Just make it "compensation schedule, salary rate or range of salary rates."

Ms. Gigantes: Wonderful.

Mr. Ward: Are you amending your amendment?

Ms. Gigantes: That is fine.

Mr. Barlow: What was that again?

Ms. Gigantes: We have a wonderful proposal.

Mr. Charlton: She has accepted the addition.

Mr. Barlow: Let us back up here. What do we have now?

Interjection: Do not back up too fast. There is a wall behind.

Mr. Ward: We now have at the end of the definition of "job class," "and have the same compensation schedule, salary rate or range of salary rates." That way we have the broad and the narrow.

Ms. Gigantes: Most helpful.

Mr. Baetz: If you have to go in that kind of detail on everything you said in this bill, you will have a book about 10 volumes.

Mr. Ward: I am not disagreeing.

Mr. Baetz: I am glad you see it that way.

Mr. Barlow: I am concerned that the compensation schedule is not set out in any way, shape or form anyway. I suppose this clarifies a portion of it, but there are still a lot of question marks that are going to have to be determined as the work goes on for this new Pay Equity Commission.

Ms. Gigantes: Think of all the work we have saved.

Mr. Baetz: Or created.

Mr. Barlow: Right. Or created.

Ms. Gigantes: No, no.

Ms. Caplan: 12:30 is approaching.

Mr. Chairman: I recognize that. I feel somewhat reluctant to cut off the debate till we have reached the point where you are prepared to vote. If we are prepared to vote on the amendment, then Ms. Gigantes's amendment will--can we cover it in one package I wonder or should we--

Ms. Gigantes: Sure.

Mr. Chairman: You are prepared to accept the addition.

Ms. Gigantes: Yes.

Mr. Chairman: You are satisfied that you understand what the addition is?

Mr. Barlow: Yes, we are.

Mr. Chairman: All right. Then I will call for the definition of "job class," as amended, to be carried. All in favour? Opposed? That is carried. I guess you understood it all too well.

We have "total payroll" to do in terms of definitions yet. I think, Ms. Gigantes, you have this one as well.

Ms. Gigantes: It is on page 9 of our amendments. We have eliminated the first one because of previous discussions.

Mr. Chairman: Ms. Gigantes moves that subsection 1(1) of the bill be amended by adding thereto the following definition:

"total payroll" means the total of all compensation payable to the employees of an employer.

Ms. Gigantes: We would like to make it clear that the one per cent should represent all that the employer pays out to employees directly or indirectly through benefits or whatever, everything that we take account of or attempt to take account of in this legislation when we compare the rates provided to comparable-valued jobs.

### 1050

Ms. Caplan: Mr. Chairman, I would like to draw to your attention that "payroll" has already been defined under subsection 12(7) and, therefore, we believe this amendment is redundant and unnecessary.

Mr. Chairman: I am getting advice from the legislative counsel with respect to the definition of the words "total payroll." There is some concern that the usage of the words "total payroll" is perhaps not in conflict with, but is different from the use of the word "payroll" that is contained within the bill. Rather than have me attempt to explain it, since I am just hearing it off to the side, I will have the counsel explain it and maybe we can get to the bottom of it.

Mr. Revell: Maybe it is a simple question of asking whether the expression "total payroll" is used anywhere, because I do not remember seeing the expression "total payroll." It may have been in one of Ms. Gigantes's motions and it is a motion that has been pulled, so the expression is not

being used. To that extent it is not necessary because it does not tie to anything, and to the extent that it is trying to do something with respect to payroll as it is used in subsection 12(7), "payroll" is defined in a section that has in fact been passed; if it is an attempt to override a provision that has been passed, then it is out of order, I would submit to the chair.

Mr. Chairman: It would have to be reopened.

Ms. Gigantes: That is a problem, yes. I should have raised it when we dealt with subsection 12(7). I would ask the permission of the committee to reopen on this matter.

 $\underline{\text{Mr. Chairman}}$ : Just so we understand where we are at, we will have to reopen subsection 12(7), which requires the unanimous consent of the committee, in order to debate the use of the words "total payroll" and to define them within the bill.

All those in favour of reopening subsection 12(7)? All those opposed? We do not have unanimous consent; therefore, we will have to proceed, and we cannot debate the definition of "total payroll."

Do we go to subsection 1(3) now? Is that your amendment as well?

Ms. Gigantes: Yes.

Mr. Chairman: Ms. Gigantes moves that subsection 1(3) of the bill be struck out and the following substituted therefor:

"(3) Where, in the opinion of the commission, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, partnership, syndicate or association or any combination thereof, under common control or direction, the commission may, upon the application of any person or bargaining agent concerned, treat the corporations, individuals, partnerships, syndicates or associations or any combination thereof as constituting one employer for the purposes of this act and grant such relief, by way of declaration or otherwise, as it considers appropriate."

Ms. Gigantes: In speaking to our motion, I would like to indicate to members of the committee that this section is taken almost word for word from the Labour Relations Act, subsection 1(4). It is known there as the related employers provision. What we are attempting to do with this motion is to make sure that those activities carried on in the economy, even within the geographic division as this committee has approved it—as spelled out in the bill—should in fact require the employer to be responsible for all that he, she, it or associates control as an employer within that geographic division and be held responsible for the implementation of this legislation through a related business provision.

It would obviously be something that the commission would decide in the end, but it would allow an employee to make application that, for purposes of the implementation of this legislation, activities carried on in what might appear to be or what the employer might claim to be separate establishments should in fact be treated as one establishment. That would have some significance for large regional municipalities, for example, or where firms, such as Cara Operations or VS Services, carry on separate activities, but should in our view be treated as one employer.

Further, we had indications from a personnel spokesman for General Motors that the legislation as it stood was simply going to be an encouragement to business to incorporate separate establishments as different functions that an enterprise was carrying on within a geographic division. We would like to see that incentive to employers removed and, further, we would like to see employers such as Cara Operations and VS Services, in spite of pleading poverty when they came before us, carry on very profitable employment lines.

 $\underline{\text{Mr. Chairman}}$ : With respect, we have debated this item in various forms at least three or four times that I can recall. You have placed the amendment and I think the members of the committee are prepared to vote on it.

Ms. Gigantes: I am quite willing to vote on it.

Motion negatived.

Mr. Chairman: Shall subsection 1(3) of the bill as printed carry? All in favour? Carried.

Subsection 1(4)? Carried.

Ms. Caplan moves that section 1 of the bill be amended by adding thereto the following subsection:

"(5) A job class may consist of only one position if it is unique in the establishment because its duties, responsibilities, qualifications, recruiting procedures or compensation schedule are not similar to those of any other position in the establishment."

Before we proceed to debate this particular amendment, I think it would be in order to recognize that one of our colleagues on this committee, Mr. Polsinelli, was called to the bar yesterday. On behalf of all members of the committee, I would like to congratulate Mr. Polsinelli and wish him every success as a lawyer.

Ms. Caplan: Do we have to take his legal advice now?

Mr. Chairman: We have never taken his legal advice when he was practising to be a lawyer, and now that he can practise as a lawyer—sincerely, I say on behalf of all members of the committee, we do recognize the amount of hard work that goes into achieving that particular status, sir, and our congratulations and heartiest best wishes go with you in your future career as a lawyer.

<u>Interjection</u>: Is that a nice way of saying he has been at a bar for 24 hours?

Mr. Polsinelli: Mr. Chairman, I thank you very much for those very kind remarks, but I can assure you that I intend first to have a successful career as a politician and then one as a lawyer.

Mr. Barlow: Well, it has been quite successful so far.

Ms. Caplan: Can we vote on this?

Mr. Chairman: Ms. Caplan thought perhaps we should put that to a vote. I am not too sure whether the amendment is in order.

Ms. Caplan: Just for Mr. Polsinelli, all morning I have been calling for votes on everything that Mr. Chairman has to say.

Mr. Ward: I do not know whether we need lawyers on the justice committee, but it is also Mr. Knight's birthday.

Mr. Chairman: Well, we have someone called to the bar. Were you called to the bar on your birthday by Mr. Polsinelli, by any chance? Congratulations, sir, and we wish you a happy birthday. Any other events before we continue?

All right, we have the government amendment. Would you like to speak to it, Ms. Caplan?

Ms. Caplan: I think it is self-explanatory and defines the one-member job classes we have discussed numerous times before the committee. I think we could just proceed with a vote.

Mr. Baetz: Mr. Chairman--

Mr. Chairman: Not quite.

Mr. Baetz: Indeed not. I would like to ask whether Ms. Caplan might show, by way of an example, why we might in a certain situation have only one position identified as a job class.

### 1100

Ms. Caplan: There are probably numerous examples, but I would like to ask the staff if perhaps they could give Mr. Baetz an example of--

Mr. Baetz: One or two graphic examples that would show the advantages of this clause, because I can think of a thousand disadvantages.

Ms. Caplan: One I can think of would be where, in what was primarily an all-female establishment, there might be one male janitor, one male bookkeeper or one male doing a job or function that was unique or had specific qualifications that would allow for comparability.

Mr. Baetz: That is what I thought the advantage would be. In other words, perhaps a garment factory where you have 110 female employees at the machines but you have one male maintenance man who does the heavy work and so forth; in order to bring that plant under this legislation, you would want to make that comparison. Is that the situation you are trying to deal with here?

Ms. Caplan: Yes. The purpose of this is not to exclude but to make the bill as inclusive as possible for those kinds of situations.

Mr. Baetz: I do not share the cynicism our friends over there have of employers, but in a situation such as that, surely the temptation for an employer would be dramatic, if he had only one male employee and 110 female employees, to simply say, "I will fire the male and put in a female."

Ms. Caplan: It is still a male job class based on historical incumbency, and therefore any affirmative action or equal opportunity program to encourage women into nontraditional jobs would not remove the designation of a male job class. I am glad you brought that up because I think it is an important point to make. They will not be able to use that to avoid the

parameters of the bill. Because of the historical incumbency, it would still be a male job class.

Mr. Barlow: Even though a female were doing it at a greater or lesser rate of pay than the male who retired, let us say?

Ms. Caplan: We are talking about a job class which historically has been done by a male; where you now have a woman moving into that nontraditional area, the historical incumbency will allow for the comparison as a male job class. It is a very important part of this legislation in the kinds of situations where you have predominantly female establishments.

Mr. Baetz: If he were to dismiss that male employee because of the high wages, he could hire somebody at lower wages.

Ms. Caplan: It would still be covered by the historical incumbency. You could also have a case there under the Human Rights Code, but that is a separate argument.

If it were for the purposes of the avoidance of the act, one, they would not avoid the act, and two, they would open themselves to a case based on discrimination because of gender.

Mr. Baetz: Why would it not be possible to speak in terms of a group of two or five? You could go back to your historical incumbency and say-

Ms. Caplan: No. The incumbency number is a different argument. I understand your position that all classes should have a minimum incumbency of five. That is not our position. We want this to be as inclusive as possible dealing with job classes and work that is traditionally done by males and females. The whole purpose of this legislation is the antidiscriminatory factor based on gender.

Mr. Barlow: Let us say this one male who was in the maintenance department retires. He retires at the top end of the salary scale. A new person coming in is going to get hired at the lower end of the salary scale. If it is a female, she has to be paid the same amount as the previous person, but if it happens to be a male he goes straight down to the bottom of the salary scale.

Mr. Ward: No, not at all. If a new person comes in and starts at the bottom of the salary scale because he is new, and the scale is based on seniority, he would start at the bottom of the scale but it is the scale of a male job class. Just because the person is a female does not change it from being a male job class.

Mr. Barlow: All right. I see what you are saying.

Mr. Ward: If you bring in a male, he is going to start at the bottom; if you bring in a female, she is going to start at the bottom; but it is a male job class.

Mr. Chairman: If you have a very small company, they will not have any salary scale at all.

Mr. Barlow: No, they just pay what the market will bear.

Mr. Charlton: A very small company will not--

Mr. Barlow: No, they will not under this.

Mr. Chairman: I was thinking of 10 and up, Mr. Charlton, as being small.

Ms. Gigantes: I would like to move that we make the same amendment to this addition to job class as we made previously to the definition of job class, and that would be to--

Mr. Barlow: My amendment or yours?

Mr. Ward: No. We passed a definition that included compensation schedule, salary range-

Ms. Gigantes: "Salary grade or range of salary rates."

Mr. Ward: That would keep it consistent.

 $\underline{\text{Ms. Caplan:}}$  We will accept that, instead of moving an amendment to it.

Mr. Ward: We will accept that as part of this.

Ms. Caplan: I will just add that in, if you wish.

Mr. Chairman: Okay. If you will add that in, then we will cover it all when we carry that entire section.

Mr. Barlow: What does this amendment do to the predominance test--60 per cent female and 70 per cent male?

Mr. Ward: The 60-70 per cent was used to determine male and female job classes within an establishment, but subsection 1(4) indicates—to begin with, if it is only a one-person position and he is a male, it is 100 per cent, and we have had a historical incumbency clause in the bill from the outset.

Mr. Baetz: I would suggest that if and when this becomes an active bill, you had better get a very effective communications officer to tell the world why in the world you have a group defined as one person or as one position.

Ms. Gigantes: It is a job class.

Mr. Baetz: It is a job class of one.

Mr. Ward: This is where we get into the whole difficulty. There keeps being an assumption that individuals are being compared rather than jobs. Consistently, it is jobs we are talking about--job classes.

Mr. Baetz: That is what I say. You had better have a good communications officer to explain that, because I think there is an enormous amount of questioning and uncertainty out there in the business community on this particular issue.

Mr. Ward: I think that could be done.

Mr. Chairman: All right. We are going to include the amendment to the amendment that Ms. Gigantes has proposed. That will be incorporated in the

amendment, so we will vote once on the -- is it an amendment or an addition to the section?

Ms. Caplan: I do not think it is an amendment to ours in terms of the parts of section 1.

Mr. Chairman: The amendment is to add new subsection 5 to section 1.

Motion agreed to.

Section 1, as amended, agreed to.

Mr. Chairman: Ms. Gigantes has a new section la.

<u>Ms. Gigantes</u>: To indicate what I am about to do here, the amendment is printed on page 14. Because we had rejection by this committee of our amendment that would establish that job comparisons should occur on an establishment-wide basis, we are going to remove those sections from this amendment which are numbered subsections la(1) and la(2). Therefore, I will be moving subsections la(3), la(4) and la(5) and renumbering them.

Mr. Chairman: Ms. Gigantes moves that the bill be amended by adding thereto the following section:

- "la. (1) Two or more employers and the bargaining agent or agents for their employees, who come together to negotiate a central agreement, may agree that, for the purposes of an equal pay plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.
- "(2) Two or more municipalities in the same geographic division and the bargaining agent or agents for their employees or, if there is no bargaining agent, the employees, may agree that, for the purposes of an equal pay plan, all the employees constitute a single establishment and the municipalities shall be considered to be a single employer.
- "(3) Notwithstanding that the employees of two or more employers or municipalities are considered to be one establishment under subsections (1) or (2), each employer is responsible for implementing and maintaining the equal pay plan with respect to the employer's employees."

### 1110

Ms. Gigantes: If I can speak to the purposes, essentially what we are talking about is the kind of bargaining that goes in the Ontario Hospital Association and various other groups. We hope for some simplication of the methodology where there are small municipalities and so on. We would like to set out in the bill that this kind of arrangement, for purposes of implementing the legislation, is totally approved by the Legislature but we would also, under the last subsection, like to indicate that each separate employer will have the responsibility for implementation within that employer's establishment.

Mr. Chairman: Can you expand on what you are talking about in what I have renumbered subsection 2, but which would be your subsection 4? You are, in effect, saying that the employees can make the determination that two or more municipalities within a geographic division or region--

Ms. Gigantes: No. If you start with that subsection, right at the top, it says, "Two or more municipalities...." Those are the employers.

Mr. Chairman: I am sorry; okay.

Ms. Gigantes: There would have to be an agreement between employees' representatives or employees and the municipalities as employers. We are simply offering an avenue within this bill that we hope will ease the process in some situations. These situations have arisen in the past, in our view.

Mr. Ward: We do not have any problem with this amendment. I think it is permissive in nature, it is fair to say. It may be convenient to be permissive in this regard, not just on the part of the employees but also on the part of the employers.

Mr. Barlow: Can I have an example, though? Are we talking about the works department from Ottawa and the works department from Nepean getting together and negotiating? Is that what we are saying?

Ms. Gigantes: I think that could happen if that is what those municipalities and the workers involved with those municipalities wanted.

Mr. Ward: It would let both North Dumfries and South Dumfries get together to bargain.

Ms. Gigantes: It would not remove the obligation for each employer to make sure that the equal pay plans they ended up with were equal pay plans that fit within the context of this legislation.

Mr. Chairman: Do you want to do the sections individually or together? All together? All in favour of the amendments proposed by Ms. Gigantes?

Ms. Gigantes: To section la, now labelled subsections 1, 2 and 3.

Mr. Chairman: Yes.

Opposed?

Motion agreed to.

Section la agreed to.

Mr. Chairman: I am going to move in chronological order which means that, on the roadmaps we have prepared for your information, we are going to jump down to clause 7(1)(f), which is the Conservative amendment, simply because it follows section 1 and then we will go back to section 23.

Mr. Revell: In reviewing the motion that has just been passed, from my point of view, it might read a little more smoothly on the printed page--on page 14, it is printed as subsection 4 but it will become subsection 2--if it said, "Two or more employers who are municipalities...." The reason for that is--

Ms. Gigantes: Wonderful.

Mr. Chairman: All right, if that wording is acceptable, do we need a motion on that?

Mr. Revell: There will be a complementary amendment in subsection 5, as printed, as well, to delete "or municipalities."

Mr. Chairman: Can I ask if that wording change is agreed to?

Agreed to.

Mr. Chairman: On section 7--

Interjection: You need unanimous consent.

Mr. Chairman: I am sorry. We do need unanimous consent to reopen section 7 to consider the proposed amendment.

Mr. Ward: I believe the case was made with regard to this amendment by the official opposition yesterday in consideration of another amendment. I really wonder, given the lateness of the hour, whether we need to redo the debate.

Ms. Gigantes: We do not want to either.

Mr. Chairman: I will call for the motion to allow for a debate on this which requires, again, unanimous consent.

Mr. Ward: My understanding is that the Progressive Conservatives are saying they are prepared to put the motion and just have it voted. In that case, we will grant unanimous consent to reopen it so that they can at least put their motion. I think that is fair.

Mr. Chairman: All in favour of reopening section 7? All those opposed?

Agreed to.

On section 7:

Mr. Chairman: My understanding is that unanimous consent was granted on the basis that you would put the motion, anticipating that it would not go through and that it would not be debated. Is that correct? You now are free to put the motion.

Mr. Baetz moves that subsection 7(1) of the bill be amended by adding thereto the following clause:

"(f) a provincial agreement as defined in section 137 of the Labour Relations Act."

Mr. Baetz: Once again, recognizing futility, I will say no more about it. It comes from the construction association and applies to some other industries, but I will go along with the dictates of this group and say no more.

Mr. Chairman: You are not suggesting that the chairman is a dictator, are you?

Mr. Baetz: No. you are being very fair.

Mr. Chairman: I am trying to be.

All in favour of the motion?

All those opposed?

Motion negatived.

Mr. Chairman: Following in order, Ms. Gigantes, you have a new section 8a?

Ms. Gigantes: Thank you. This is printed on page 27c.

Mr. Chairman: Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"8a. Within one year of establishing a new job class, the employer shall file with the commission proof of compliance with this act with respect to the job class and post a copy of the filed material in the work place."

Ms. Gigantes: Our purpose here is to provide in the legislation for changes that will occur in the work place in establishments that existed before the passage of this legislation, and to have establishments that are being created after the passage of this legislation come into compliance with the act. In this amendment, we are calling for a positive act to be undertaken by the employer in the new establishment, which formally indicates to the commission compliance with the act.

Mr. Barlow: I would like to speak against that motion. That would strap an employer. He would not be able to expand his business. He would not be able to create new jobs to help anybody if you put in an amendment such as this. Because he would be creating an entirely new product line, he would need a new class of worker. You are suggesting he would not be allowed to do that. I have trouble with the whole act but this has to be a very hostile amendment.

Ms. Gigantes: That is a total misreading of what this amendment says. The bill itself takes into account changes in circumstances. There will be changes in circumstances in all the work places, which will involve introduction of technology, creation of new job classes and so on. All we are saying here is that either with an old establishment existing before the time of this bill or within a new establishment, those changes in circumstances, either for the creation of a new job class within an existing establishment or for the creation of a new job class by a new establishment, shall call forth a positive action on the part of the employer to indicate that the employer is complying with the legislation.

We already have subsection 6(1) that says, "Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer." What this amendment is suggesting is that there be a formal step taken by employers to do precisely that.

# 1120

Mr. Chairman: Is there any further comment? I do not want to cut off debate if you have any other comments. If not, shall the amendment proposed by Ms. Gigantes carry? Opposed?

Motion negatived.

On section 23:

Mr. Chairman: Subsection 23(4) was left open with respect to mandatory posting.

Mr. Ward: I believe we have a government amendment, do we not? Wait a minute; I guess we do not have to make this amendment now.

Ms. Caplan: No, because --

Mr. Ward: We stood that down.

Ms. Caplan: That is right.

Mr. Ward: Then we went back to section 9 and we do have mandatory posting now.

Ms. Caplan: Right.

Mr. Chairman: So how do we treat subsection 23(4)?

Ms. Caplan: We carry subsection 23(4) as printed.

Mr. Chairman: Does that satisfy your concerns if we carry it as printed?

Ms. Gigantes: Yes.

Mr. Chairman: Then I will call for the vote on subsection 23(4) which effectively is as printed on page 38 of the bill. All in favour? Opposed?

Section 23, as amended, agreed to.

On section 24.

Ms. Gigantes: This was stood down earlier, following the advice of counsel. It is printed on page 74 of our amendments and it has been rearranged with the assistance of counsel to try to fit it in a better place in the bill. It is now called subsection 24(la).

I move that section 24 of the bill be amended by adding thereto the following subsection:

"(la) The hearings tribunal shall hold a hearing within 90 days of receiving an application under subsection 1(3) to determine if associated"--

Mr. Chairman: Excuse me. I have to interrupt you. The motion may be out of order.

Ms. Gigantes: It now is out of order.

 $\underline{\text{Mr. Chairman:}}$  The reason I say that is we already defeated a companion piece.

Ms. Gigantes: We did.

Mr. Chairman: So this would be in conflict now.

Ms. Gigantes: I was preoccupied trying to make out the handwriting instead of looking at the contents. Excuse me.

Section 24, as amended, agreed to.

Mr. Chairman: We can then go to section 32a. Ms. Gigantes, it would help if you gave me the page number when you find it.

Ms. Gigantes: There is no page number. Again, this was a late edition amendment.

Mr. Chairman: Can we relax for a moment? We have a new government amendment in this section that is being circulated now, so I would appreciate your taking a moment to read that amendment. Then we will carry on from there.

Do you want to take a five-minute break at this point? Why not take a five-minute break? It will be a quick break because you know the time frame we are working under today is very tight. We will allow you to have a chance to read that amendment and take a short and quick break and then we will be right back.

The committee recessed at 11:23 a.m.

# 1135

Mr. Chairman: Ms. Caplan moves that clause 32a(2)(e), as set out in the government motion be struck out and the following substituted therefor:

"(e) shall conduct a study with respect to systemic gender discrimination in compensation for work performed, in sectors of the economy where employment has traditionally been predominantly female, by female job classes in establishments that have no appropriate male job classes for the purpose of comparison under section 5 and, within one year of the effective date, shall make reports and recommendations to the minister in relation to redressing such discrimination."

Ms. Gigantes: I would like to move an amendment. The amendment would strike in the third to last line the words "make reports and recommendations to the minister in relation to redressing such discrimination" and substitute wording that you will find in our motion 32a, unnumbered page. Has everybody got that? We do not have a page number, unfortunately. Subsections 32a(6) and (7).

It comes from subsection 6, in the fourth to last line. We would insert the wording "determine the basis on which comparisons are to be made and the pay equity plan for the establishment shall be implemented on the basis of the determination."

Mr. Ward: I think we had a good part of this debate yesterday. The purpose of the government amendment was to make it clear what it was we were studying and I think there were some concerns about the way that was written.

Mr. Charlton: We also had a question or a concern around the word "sectors" and how that will be interpreted, so perhaps the staff could comment for us.

Mr. Ward: I am not sure to what extent the staff may be able to comment on it. We tried to work this out this morning. Our concern was the

government had indicated commitment to look at those sectors. What we had referred to so many times was the child care worker as an example. We put "sectors" in there so that it was not limited to that. It was meant to be fairly broad and open for those jobs that are historically and stereotypically, I suppose, jobs that are performed virtually exclusively by females. What I am suggesting is that I do not believe the commission is limited to just one application, that being the child care workers.

Mr. Charlton: No, I think we understand that. I think the concern is that there is quite a range of uses of the word "sector" in the job market.

Mr. Ward: What we debated this morning was whether we would write in "female job ghettos," but then you get into--that is the intent, but legislatively, is that appropriate?

Mr. Charlton: We are not looking to be that specific. The concern is around this particular word. For example, "service sector" is a pretty broad term. In that service sector, you may have a whole lot of the ghettos but in the whole sector you may not have female predominance.

# 1140

 $\underline{\text{Mr. Ward}}$ : Again, there is no intent to limit. I do not believe the Pay Equity Commission would feel constrained by that.

Ms. Gigantes: I can accept that.

Mr. Baetz: From a totally neutral and objective position, I really think the government's amendment is clear. It is all-encompassing. It provides the flexibility we want this study to have to make those "recommendations to the minister in relation to redressing such discrimination." I worry that every time we get down and start spelling out the details, we may inadvertently be tying the commission's hands, so I think this government amendment is very much in order.

Mr. Chairman: Shall I call for the amendment to the amendment first? All in favour of the proposed amendment to the amendment? Opposed?

Motion negatived.

Mr. Chairman: All in favour of the amendment?

Motion agreed to.

Mr. Chairman: Do you still have a portion of an amendment on section 32a?

Ms. Gigantes: We do. It was read into the record before. It is subsection 32a(7). It would have to be renumbered. I can re-read it. We know what the vote is going to be. It is already on the record and I doubt whether there is any purpose in putting it as a motion at this point.

Mr. Chairman: Will you withdraw it?

Ms. Gigantes: We will withdraw it, simply because we have already put it on the record and we know what the vote is going to be.

Mr. Chairman: Okay.

Section 32a, as amended, agreed to.

Mr. Chairman: We are on page 54 of the bill, part VI, "Regulations and Miscellaneous." We had considerable debate about the first portion of that with respect to the Lieutenant Governor in Council, and we discussed clause 35(g) in some detail.

Clerk of the Committee: We carried the amendment to clause 35(g).

Mr. Baetz: And clause 35(c).

Mr. Chairman: I believe clause 35(g) was carried.

Clerk of the Committee: Yes, as amended.

Mr. Chairman: Shall we start back at clause 35(a)? I will go down them in a group. If you have an amendment or a change, please advise.

Shall clause 35(a) carry? Carried.

Clause 35(b)?

Ms. Gigantes: No.

Mr. Chairman: Hold clause 35(b).

Ms. Gigantes: We made our argument yesterday. First, we really feel we have set up the methodology in the legislation, for what it is worth. We have provided an appeals tribunal that will create a framework of decisions that can be used as guidelines. If there are problems with the application of the legislation in the view of the government or the Legislature, the matter can be attended to by the Legislature in legislative forum. We do not want to see regulations prescribing these items.

Mr. Chairman: Unless there is further debate, I will call the question. All in favour of clause 35(b) as written? Opposed?

I had better call the vote again. Understand what I am doing; I am not calling clause 35(b) as an amendment.

Mr. Baetz: I realize what you are doing. We are still discussing it.

Ms. Caplan: Let me ask one question of legislative counsel. When we discussed this in the morning, you made a statement about what you felt the effect would be if we did not have the ability to regulate as far as the implementation of this bill is concerned. I ask that you make that statement to the committee.

Mr. Revell: This is a bill that presumes reasonably quick implementation in all sorts of areas. Without regulation-making powers, it may very well be the case that you are going to be tied up in court for a long time on a lot of these kinds of issues. I think that is one of the reasons you would want many of these kinds of issues--in fact, it is probably the reason you want many of these--resolvable by regulation.

Ms. Caplan: It would effectively slow the implementation.

Mr. Revell: It could have that effect.

Ms. Gigantes: It would not necessarily have that effect.

Mr. Ward: But I think it is fair to say that there will be some terrible inconsistencies for those who are first exposed to the process because you do not have--

Ms. Gigantes: I do not want to argue this all day, but I think if we set up a hearings tribunal that has people of reasonably sound mind and favourable inclination to the administration of this bill, all these horrors will not arise. Thank you.

Mr. Chairman: Shall clause 35(b) carry? Opposed? Carried.

Shall clause 35(c) carry?

Mr. Baetz: Clause 35(c) is the one I had some problems with yesterday because of the way it is set out here: "prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class."

I felt yesterday that had given rather sweeping powers to determining whether there is a female job class or a male job class, that went beyond the intent of the bill, but I find as I go back—and I got ahead of myself here about an hour ago. When you go back to look at how you determine female job class or male job class, under (b) of that, we are giving the review officer or the commission very substantial powers in terms of determining beyond the 60 per cent what constitutes a female or a male job class.

Under definitions, if you give those kind of powers to your review officer or the commission, I guess it follows automatically that you are going to have to give corresponding powers to develop regulations governing that. At least we are consistent in here. I guess what I still worry about, though, is that in this legislation we are giving the commission and the review officers very extensive powers in terms of determining male or female job classes.

As I said yesterday, it may be that this is the nature of the beast. Maybe you cannot spell it out in legislation for a variety of reasons. One is that it is such a complicated and complex subject matter. Another is that we do not really have any guidelines from other jurisdictions. We hear from Manitoba, Minnesota, Wisconsin, Iowa and all that, but none of that has provided real technical advice for us. I guess we have simply turned it over to the review officers and to the commission to set up regulations and make decisions.

I really wonder, for example, because we have put so much emphasis on the 60 per cent or more for female and the 70 per cent or more for male, could the review officers or the commission in their wisdom simply say, "These percentages really are not all that important; we have to use other criteria to determine the job classes," or what; I do not know.

Mr. Ward: I think you have identified that subsection 1(4) says that a review officer or the commission can use historical incumbency or other criteria in establishing job classes. The point I want to make is that in the absence of the authority to make regulations—and one of the things that the bill has consistently tried to do is to provide an appeals mechanism or whatever, but it has also provided the framework where there can be some agreement and some consensus. I believe there has to be a clear understanding, as much in terms of the employer's ability to understand what criteria can be used in terms of establishing what a job class is, above and beyond the 60 or 70 per cent. I believe the regulations in this regard serve the employer and

the employees, as well as the commissioner, in this whole process. I do not see how workable it is without that ability to make regulations that spell out the criteria so that an employer in developing a plan has regard to those. They are not spelled out anywhere else in this bill.

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Mr. Baetz: I agree fully that having given these powers to the review officer and the commission you have to have equal powers given under regulations.

I guess what I worry about, though, are these other criteria. What does that mean? These other criteria, for instance, could be totally inconsistent with the 60 per cent. It could mean anything. That is my worry.

Mr. Ward: It is the ability to make regulations that can be clearly enunciated, and I do not know what those are.

Mr. Chairman: The only recourse on regulatory change really is the House. At that point, you can attack the regulation on the basis that the intent is 60-70, and if it is arbitrarily moved to 50-50 or whatever, which is your concern, then the government obviously has to be in a position to defend its action.

I think I understand the government's position. It has to have that regulatory flexibility and, at the same time, it has to be prepared to defend those changes that are brought about through regulation.

Mr. Baetz: I have no problems with the--

Obviously, we have to have regulations, and we have to have powers to adopt regulations. I guess what we are really doing here is giving tremendous powers to establish other criteria to the commission.

Mr. Barlow: To the government.

Mr. Baetz: No. I would be more concerned about giving it to the commission. I am sure we can argue that. Or, it is through the Lieutenant Governor in Council, but we know what that means. That means cabinet. Cabinet, even if it had the collective billions previous cabinets had and this one maybe has to make all these decisions, cabinets do not have the time. It simply does not have the time to look at all these new criteria that will be coming in. As a result, you are eventually going to hand more and more de facto powers over in the commission to set up whatever criteria it likes and to do its own thing. That is my concern.

Having said that, I will support clause (c), because you have to have the power to make the regulations.

Mr. Chairman: Shall clause 35(c) carry? That is carried.

Shall clause (d) carry? Do you want to speak to it?

Ms. Gigantes: No. We would like to vote against it.

Mr. Chairman: You just did.

Clause (e)? Carried.

Mr. Ward: Same vote.

Mr. Chairman: Clause (f)? Carried.

Clause (g) has been dealt with.

Ms. Gigantes: Clause 35(g)?

Mr. Chairman: Yes. Do you want a refresher on what was done?

Ms. Gigantes: I will look at it afterwards, but I must have had my face in a Kleenex. It is quite possible that my face was in a Kleenex at that moment.

 $\underline{\text{Mr. Chairman:}}$  Does that cause a hearing blockage as well? I just wondered how totally immersed you were in your Kleenex.

Ms. Gigantes: As long as the rest of you were able to hear.

Mr. Chairman: Clause (h)? Carried; same vote.

Shall section 35, as amended, carry? That is carried, without unanimity.

Section 35, as amended, agreed to.

On the schedule:

Mr. Chairman: We now have to move to the schedule and the amendments.

Ms. Caplan moves that the schedule to the bill be amended by adding thereto the following paragraph:

"2. For the purposes of this schedule, 'municipality' includes a metropolitan, regional or district municipality and the county of Oxford."

Mr. Ward: Let us hear it for Oxford.

Ms. Caplan: It is a technical amendment to clarify what is.

Mr. Chairman: Can we vote on the amendment? All in favour of the government amendment?

Opposed?

Motion agreed to.

Shall the schedule, including all subsections as amended, now carry? Carried.

On the appendix:

Ms. Caplan: In the appendix there is an amendment which I will not read in total, but just place.

Mr. Chairman: Ms. Caplan moves that the list of colleges, universities and seminaries listed under the heading "Ministry of Colleges and Universities" be struck out and the following substituted therefor—

Ms. Caplan: The list is before you, numbered to 31. If it is agreeable, we will dispense with the reading.

Mr. Chairman: Can we dispense with the reading on those? Do you know what is being done with respect to the changes?

Ms. Caplan: It was to make it inclusive.

Mr. Chairman: With the agreement of the committee, I will deal with the appendix, including the amendments in total. Is that agreed?

Sorry, we have another amendment.

Ms. Caplan moves that clauses l(b), (c), (m) and (q) under the heading "Ministry of Community and Social Services" in the appendix to the schedule to the bill be struck out and the following substituted therefor—

Ms. Caplan: Clauses (b), (c), (m), (q) and (r) as in the motion before you.

Mr. Chairman: Shall the appendix, as amended, now carry? Carried.

On the preamble, we have an NDP amendment and a government amendment. I will go with the government amendment first.

Ms. Caplan moves that the preamble to the bill be amended by striking out "in the broader public sector and in the private sector" in the third and fourth lines.

That is the same technical amendment we have had in the past.

Motion agreed to.

On the preamble:

Ms. Gigantes: Preamble.

Mr. Chairman: Yes.

Mr. Ward: Is it in order now? It does not matter, if you want to put it.

Mr. Chairman: Sure it is in order.

Ms. Gigantes moves that the preamble to the bill have the additional clauses added:

"Whereas many women in the Ontario labour force work in traditionally female occupational groups, where their work is undervalued and underpaid;

"And whereas the province of Ontario, through the government of Canada, has ratified the 1951 International Labour Organization convention 100 which calls for equal remuneration for men and women workers for work of equal value;

"And whereas it is desirable to take affirmative action to eliminate gender discrimination in the compensation of male and female workers in Ontario."

Any further comment on the additional preamble as suggested by Ms. Gigantes? There being none, I will call the vote then on the amendment. Shall the amendment carry?

Opposed?

Motion negatived.

Mr. Chairman: The chair deems those in opposition to have won, in spite of the loud response from Mr. Charlton, trying to fool the chairman.

Shall the preamble, as amended, carry? Carried.

Section 40 agreed to.

On the long title:

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Mr. Chairman: We have three proposed changes and amendments on the long title.

Ms. Caplan moves that the long title to the bill be struck and the following substituted therefor:

"An Act to provide for Pay Equity."

Motion agreed to.

Mr. Chairman: Shall the title, as amended, carry?

Mr. Barlow: The short title or the long title?

Mr. Chairman: The long title.

Mr. Barlow: I would like to make just a few comments, if I could, before we call for this vote. I would just like to say that on behalf of the small business community, which I represent on behalf of our party, we did try to make what we felt would be a more meaningful bill out of this piece of legislation. We made several amendments which were not carried. We wanted to move the administration of the bill into the Ministry of Labour under the employment standards branch rather than creating a brand new bureaucracy. We opposed that very vehemently as did the business community.

We did attempt to eliminate some cross-union bargaining. We tried to reason with the government to have the commission reimbursed for any frivolous, trivial or vexatious complaints. We made several amendments to some of the definitions, none of which carried.

I am afraid that this legislation is really not going to help those whom it is designed to help. In fact, in many cases, I think it is going to hurt some of the women in the lower-paying job classes in the business community. I just wanted to put on record that we feel that, rather than the bill helping many thousands of women, many thousands of women are going to be harmed. Those who wish to have part-time work, and not work on a full-time basis, are going to be harmed.

Just before you put the vote, Mr. Chairman, I wanted to make these few

points very briefly. At the same time, I would like to commend the parliamentary assistant and the staff for the job they did. I did not agree with everything they said and the answers we got, but I do commend them for the work they did. I want to assure you that, in any amendments we proposed, we had two schools of thought in mind. One was the business community and the other was the women of Ontario. Our amendments were to try to help achieve both ends.

Mr. Charlton: Now that you have made your third reading speech, I hope you will refrain in the House.

Mr. Barlow: I will rewrite it.

Mr. Chairman: Something tells me it might be longer.

Long title, as amended, agreed to.

Bill, as amended, ordered to be reported.

Mr. Ward: Before adjournment, I would just like to express appreciation to the chairman for his most capable direction of this committee over the course of the past two weeks. It certainly has been a difficult exercise. From the outset, we knew that the task we faced was a difficult one; how to balance the very legitimate long-standing needs out there in the framework of fiscal responsibility.

Ms. Gigantes: You are being provocative.

Mr. Ward: I thank the critics and the chairman for their co-operation during the last two weeks, and I cannot think of anything that is less provocative than that.

Mr. Chairman: I appreciate those kind remarks.

If I might, just before we wrap up--and I realize that members of the third party have other responsibilities that they have to get away to--I would like to thank everyone for their co-operation. This has been a most interesting exercise. It has been a very complex and difficult bill, as we will all appreciate. If there were at times any frayed nerves, I want to assure you there was nothing personal intended. I enjoyed working with each and every one of you. We even graduated a lawyer during the course of our hearings, which I thought was most interesting. Thank you all.

I think, Mr. Baetz, you wanted to say something brief by way--

Mr. Baetz: No. I just wanted to thank the staff and to say that I am going home tonight and reading an article by Donald Revell on rule-making in Ontario. I am sure it is going to--

Mr. Ward: You are too late, Reuben.

Mr. Baetz: It is a bit too late now.

Ms. Gigantes: We would like to express our thanks to the staff, to the parliamentary assistant and to you, Mr. Chairman, for the smooth running of this difficult discussion. We would just like to let you know that it is not over yet.

Mr. Baetz: There are more speeches to be made, I am sure.

Mr. Chairman: Is that a promise or a threat?

The committee adjourned at 12:05 p.m.



